3–19–02 Tuesday
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Federal Register

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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Proclamation 7532 of March 14, 2002

National Poison Prevention Week, 2002

By the President of the United States of America

A Proclamation

In 1961, the Congress established the annual observance of National Poison Prevention Week. Forty-one years later, this event continues to educate Americans about the dangers of childhood poisonings and to promote measures that help prevent such poisonings. These measures and other poison awareness efforts have helped reduce deaths from childhood poisonings by more than 90 percent since 1962.

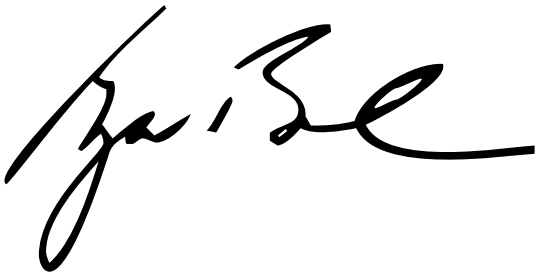
According to the American Association of Poison Control Centers, more than 1 million children each year are exposed to potentially poisonous medicines and household chemicals. In an effort to put an end to tragic accidents, the United States Consumer Product Safety Commission requires child-resistant packaging for many medicines and household chemicals. But this special packaging is ''child-resistant,'' not ''child-proof.'' For this reason, it is essential to keep potential poisons locked up and away from children.

Members of the Poison Prevention Week Council, representing 36 national organizations, work every year to organize events during this special week to raise awareness of unintentional poisonings, as well as to illustrate the steps that can be taken to prevent them. Coalition members believe every poisoning is preventable. Group members encourage Americans to use and properly reclose child-resistant packaging, keep poisonous substances secured and out of the reach of children, and keep the poison center telephone number, 1–800–222–1222, nearby in case of an emergency. This new nationwide number connects callers to medical experts that provide immediate treatment advice for poison emergencies. These centers are open 24 hours a day, 7 days a week.

To encourage Americans to learn more about the dangers of unintentional poisonings and to take more preventive measures, the Congress, by joint resolution approved September 26, 1961, as amended (75 Stat. 681), has authorized and requested the President to issue a proclamation designating the third week of March each year as ''National Poison Prevention Week.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim March 17 through 23, 2002, as National Poison Prevention Week. I call upon all Americans to observe this week by participating in appropriate ceremonies and activities and by learning how to prevent poisonings among children.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of March, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-sixth.



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Billing code 3195–01–P

Rules and Regulations

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OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2640

RIN 3209–AA09

Exemption Amendments Under 18 U.S.C. 208(b)(2)

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule amendments.

SUMMARY: The Office of Government Ethics is issuing a final rule to amend the regulation that describes financial interests that are exempt from the prohibition in 18 U.S.C. 208(a). These final rule amendments revise the existing exemption regulation by: creating a new exemption for sector mutual funds; raising the de minimis exemption for matters affecting interests in securities from $5,000 to $15,000; and creating an exemption that permits an employee to act in certain particular matters that affect an entity in which the employee owns securities, where the entity is not a party to the matter.

EFFECTIVE DATE: April 18, 2002.

FOR FURTHER INFORMATION CONTACT: Richard Thomas, Associate General Counsel, Office of Government Ethics; Telephone: 202–208–8000; TDD: 202–208–8025; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION:

I. Rulemaking History

Section 208(a) generally prohibits employees of the executive branch from participating in an official capacity in particular matters in which they or certain others specified in the statute have a financial interest. Section 208(b)(2) of title 18 permits OGE to promulgate regulations describing financial interests that are exempted as being too remote or inconsequential to warrant disqualification pursuant to section 208(a). The Office of Government Ethics' executive branchwide section 208 regulations, including such exemptions, are codified at 5 CFR part 2640.

On September 6, 2000, OGE published a set of proposed amendments to the regulation, proposing to revise some existing exemptions as well as to add some new exemptions. See 65 FR 53942–53946. The proposed rule provided a 90-day comment period. The Office of Government Ethics received 13 comment letters on the proposed rule. After carefully considering all comments and making appropriate modifications, OGE is publishing this final rule after obtaining the concurrence of the Department of Justice pursuant to section 201(c) of Executive Order 12674, as modified by E.O. 12731. Also, as provided in section 402 of the Ethics in Government Act of 1978, as amended, 5 U.S.C. appendix, section 402, OGE has consulted with both the Department of Justice (as additionally required under 18 U.S.C. 208(d)(2)) and the Office of Personnel Management on this final rule.

II. Analysis of Comments and Revisions

Of the thirteen comments submitted, ten were from executive branch Departments or agencies, one was from a professional association, and two were from individuals. Overall, the comments to the proposed rule were positive. Many commenters had specific suggestions pertaining to one or more components of the proposed rule. Two commenters expressed the view that the OGE Form 450 and SF 278 reporting requirements should be revised to no longer require a filer to disclose on his form assets which are exempt under 5 CFR part 2640. These reporting issues are separate and distinct from the issue of whether an exemption is warranted under section 208(b)(2). Although OGE will not address specific reporting issues in this rulemaking, comments relating to financial disclosure requirements have been considered as part of OGE's separate proposed revision of the Ethics in Government Act, as amended.

The analysis below focuses on changes from the proposed amendments, either as recommended by the commenters or which OGE believes are otherwise appropriate. Many of the amendments proposed are being adopted as final without change in this rulemaking document.

Subpart B—Exemptions Pursuant to 18 U.S.C. 208(b)(2)

Section 2640.201 Exemptions for Interests in Mutual Funds, Unit Investment Trusts, and Employee Benefit Plans

Sector Mutual Funds

Several commenters recommended that OGE revise the proposed exemption for sector mutual funds to provide a total, rather than a $50,000 de minimis exemption. Two commenters suggested raising the de minimis amount. The Office of Government Ethics believes that the $50,000 de minimis exemption amount proposed is appropriate and is adopting it as final in § 2640.201(b) as revised. Establishing a total exemption for all employees would be difficult in light of the legal standard that the exempted interest be ''remote and inconsequential.'' The $50,000 exemption being adopted is reasonably considered remote and inconsequential for all employees and is consistent with the de minimis exemption for particular matters of general applicability in existing paragraph (b) of § 2640.202, which is being redesignated as paragraph (c) thereof (see below).

This final rule contains one technical correction of the wording in the proposed rule. In the proposed rule, OGE inadvertently proposed limiting the existing exemption for sector mutual funds at § 2640.201(b) by restricting the exemption to disqualifying financial interests arising from the ownership by the employee, his spouse or minor children of an interest in the fund. Consistent with the original exemption for sector mutual funds, OGE intended that the new exemption would include interests held by an employee and all the others whose financial interests are imputed to him under 18 U.S.C. 208. This is reflected in the final rule by tracking the reference in the existing paragraph (b) of § 2640.201 prior to this amendment. The wording and structure of the exemption also have been modified somewhat in this final rule to clarify its meaning.

Section 2640.202 Exemptions for Interests in Securities

De Minimis Exemption for Matters Involving Parties

Several commenters were pleased with the proposed increase (now being adopted as final) in the de minimis exemption amount for securities in particular matters involving specific parties from $5,000 to $15,000, under § 2640.202(a) as proposed for revision. However, one commenter stated that the increase in the de minimis amount would lead to greater intrusion into the privacy of filers, by reducing the number of reported assets, but probing further into the values of assets not previously required to be reported on the OGE Form 450. As an initial matter, raising the de minimis amount will not affect the OGE Form 450 filer's reporting requirements. In addition, as mentioned earlier, the reporting requirements for both the OGE Form 450 and the SF 278 are separate matters from the focus of this rulemaking, which addresses whether certain financial interests are too remote or inconsequential under section 208(b)(2) to warrant disqualification under 18 U.S.C. 208(a).

De Minimis Exemption for Matters Affecting Nonparties

The Office of Government Ethics received varied comments in response to proposed new § 2640.203(m). Under that section, as proposed, an employee would have been able to participate in certain matters in litigation involving specific parties in which the employee had a disqualifying financial interest of up to $25,000 in securities issued by a nonparty affected by the litigation. Two commenters were generally satisfied with the proposed rule. Of those who expressed some dissatisfaction with the proposed rule, two recommended broadening the rule to encompass any particular matter affecting nonparties, rather than limiting the rule to matters in litigation. Two commenters recommended including an example or definitions.

The Office of Government Ethics' original proposed part 2640 regulations, published for comment in the **Federal Register** on September 11, 1995, included a proposed exemption for disqualifying interests arising from ownership of securities issued by a nonparty. See 60 FR 27228. In the comments to that proposed rule, some agencies expressed a concern that this specific proposed exemption would be too complex. As a result, OGE decided not to include the exemption in its final version of 5 CFR part 2640. Over the years, however, some agencies have continued to express a need for such an exemption. The strongest advocate stressed the need for an exemption for matters in litigation affecting nonparties, so OGE included this exemption in the proposed regulation published on September 6, 2000. As noted, two commenters to the proposed amendments supported broadening this exemption, essentially recommending that OGE establish in this final rule the exemption as proposed in September 1995. After additional consideration, OGE has decided to adopt in revised § 2640.202(b) of this final rule a broader exemption than that proposed, so as to include any particular matter involving specific parties, not just matters in litigation. Because of its broadened scope, this new exemption is being moved to the primary section for interests in securities at § 2640.202. The broader rule will be more useful to a greater range of agencies and will simplify the exemption by eliminating the need for determining whether a matter constitutes ''litigation.''

Moreover, to address the commenters' recommendations and to clarify the rule, OGE is adding an example to the exemption. One commenter requested that OGE define ''nonparty'' and offer guidance on how to identify nonparties and determine if they are affected by a matter. Because each situation may vary to such a degree that the question is best addressed on a case-by-case basis, OGE will not define ''nonparty'' in this rulemaking. The Office of Government Ethics believes that the example now provided will promote a clearer understanding of the application of this exemption.

In the proposed rule, OGE proposed to revise Example 2 after § 2640.203(f), relating to interests in mutual insurance companies, to suggest that the proposed § 2640.203(m) for matters in litigation could apply in the situation described in the example. Upon reflection, that suggestion was incorrect because the interests of a policy holder with a mutual insurance company would not fall within the definition of ''security'' at § 2640.102(r). Accordingly, this final rule does not contain any amendment to that example.

The rule as proposed for particular matters affecting nonparties will be revised as described above and redesignated as new paragraph (b) of § 2640.202. Existing paragraphs (b) through (e) of current § 2640.202 are being redesignated as paragraphs (c) through (f), respectively, of that section.

In addition, several existing examples in part 2640 are being revised (as proposed) to reflect the new de minimis exemption amounts.

III. Matters of Regulatory Procedure

Executive Order 12866

In promulgating this final regulation, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Review and Planning. This regulation has also been reviewed by the Office of Management and Budget under that Executive order.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this final amendatory regulation in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this proposed amendatory rule will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal executive branch employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this final regulation does not contain information collection requirements that require the approval of the Office of Management and Budget.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this final rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

Congressional Review Act

The Office of Government Ethics has determined that this proposed rulemaking involves a nonmajor rule under the Congressional Review Act (5 U.S.C. chapter 8) and has submitted a report thereon to the U.S. Senate, House of Representatives and General Accounting Office in accordance with that law.

List of Subjects in 5 CFR Part 2640

Conflicts of interests, Government employees.

Approved: November 16, 2001.

Amy L. Comstock,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending 5 CFR part 2640 as follows:

PART 2640—INTERPRETATION, EXEMPTIONS AND WAIVER GUIDANCE CONCERNING 18 U.S.C. 208 (ACTS AFFECTING A PERSONAL FINANCIAL INTEREST)

1. The authority citation for part 2640 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 18 U.S.C. 208; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

Subpart A—General Provisions

2. Section 2640.102 is amended by revising paragraph (r) to read as follows:

§ 2640.102 Definitions.

* * * * *

* * * * *

(r) *Security* means common stock, preferred stock, corporate bond, municipal security, long-term Federal Government security, and limited partnership interest. The term also includes ''mutual fund'' for purposes of § 2640.202(e) and (f) and §2640.203(a).

* * * * *

3. Section 2640.103 is amended by revising Example 1 following paragraph (a)(2) to read as follows:

§ 2640.103 Prohibition.

(a) * * *

(2) * * *

Example 1 to paragraph (a)(2): An agency's Office of Enforcement is investigating the allegedly fraudulent marketing practices of a major corporation. One of the agency's personnel specialists is asked to provide information to the Office of Enforcement about the agency's personnel ceiling so that the Office can determine whether new employees can be hired to work on the investigation. The employee personnel specialist owns $20,000 worth of stock in the corporation that is the target of the investigation. She does not have a disqualifying financial interest in the matter (the investigation and possible subsequent enforcement proceedings) because her involvement is on a peripheral personnel issue and her participation cannot be considered ''substantial'' as defined in the statute.

* * * * *

Subpart B—Exemptions Pursuant to 18 U.S.C. 208(b)(2)

4. Section 2640.201 is amended by:

a. Revising the heading of Example 1 and revising Example 2 following paragraph (a);

b. Revising paragraph (b); and

c. Revising the heading of Example 1 and adding new Examples 2 and 3 following new paragraph (b)(2)(ii).

The revisions and additions read as follows:

§ 2640.201 Exemptions for interests in mutual funds, unit investment trusts, and employee benefit plans.

(a) * * *

Example 1 to paragraph (a): * * *

Example 2 to paragraph (a): A nonsupervisory employee of the Department of Energy owns shares valued at $75,000 in a mutual fund that expressly concentrates its holdings in the stock of utility companies. The employee may not rely on the exemption in paragraph (a) of this section to act in matters affecting a utility company whose stock is a part of the mutual fund's portfolio because the fund is not a diversified fund as defined in § 2640.102(a). The employee may, however, seek an individual waiver under 18 U.S.C. 208(b)(1) permitting him to act.

(b) *Sector mutual funds.* (1) An employee may participate in any particular matter affecting one or more holdings of a sector mutual fund where the affected holding is not invested in the sector in which the fund concentrates, and where the disqualifying financial interest in the matter arises because of ownership of an interest in the fund.

(2)(i) An employee may participate in a particular matter affecting one or more holdings of a sector mutual fund where the disqualifying financial interest in the matter arises because of ownership of an interest in the fund and the aggregate market value of interests in any sector fund or funds does not exceed $50,000.

(ii) For purposes of calculating the $50,000 de minimis amount in paragraph (b)(2)(i) of this section, an employee must aggregate the market value of all sector mutual funds in which he has a disqualifying financial interest and that concentrate in the same sector and have one or more holdings that may be affected by the particular matter.

Example 1 to paragraph (b): * * *

Example 2 to paragraph (b): A health scientist administrator employed in the Public Health Service at the Department of Health and Human Services is assigned to serve on a Departmentwide task force that will recommend changes in how Medicare reimbursements will be made to health care providers. The employee owns $35,000 worth of shares in the XYZ Health Sciences Fund, a sector mutual fund invested primarily in health-related companies such as pharmaceuticals, developers of medical instruments and devices, managed care health organizations, and acute care hospitals. The health scientist administrator may participate in the recommendations.

Example 3 to paragraph (b): The spouse of the employee in the previous Example owns $40,000 worth of shares in ABC Specialized Portfolios: Healthcare, a sector mutual fund that also concentrates its investments in health-related companies. The two funds focus on the same sector and both contain holdings that may be affected by the particular matter. Because the aggregated value of the two funds exceeds $50,000, the employee may not rely on the exemption.

* * * * *

5. Section 2640.202 is amended by:

a. Revising paragraph (a)(2);

b. Revising the heading of Example 1 and revising Examples 2 and 3 following paragraph (a)(2);

c. Redesignating paragraphs (b) through (e) as paragraphs (c) through (f), respectively;

d. Adding a new paragraph (b);

e. Adding new Example 1 following new paragraph (b)(2); and

f. Revising the heading of Example 1 and removing Example 2 following redesignated paragraph (c)(2).

The revisions and additions read as follows:

§ 2640.202 Exemptions for interests in securities.

(a) * * *

(2) The aggregate market value of the holdings of the employee, his spouse, and his minor children in the securities of all entities does not exceed $15,000.

Example 1 to paragraph (a): * * *

Example 2 to paragraph (a): In the preceding example, the employee and his spouse each own $8,000 worth of stock in XYZ Corporation, resulting in ownership of $16,000 worth of stock by the employee and his spouse. The exemption in paragraph (a) of this section would not permit the employee to participate in the evaluation of bids because the aggregate market value of the holdings of the employee, spouse and minor children in XYZ Corporation exceeds $15,000. The employee could, however, seek an individual waiver under 18 U.S.C. 208(b)(1) in order to participate in the evaluation of bids.

Example 3 to paragraph (a): An employee is assigned to monitor XYZ Corporation's performance of a contract to provide computer maintenance services at the employee's agency. At the time the employee is first assigned these duties, he owns publicly traded stock in XYZ Corporation valued at less than $15,000. During the time the contract is being performed, however, the value of the employee's stock increases to $17,500. When the employee knows that the value of his stock exceeds $15,000, he must disqualify himself from any further participation in matters affecting XYZ Corporation or seek an individual waiver under 18 U.S.C. 208(b)(1). Alternatively, the employee may divest the portion of his XYZ stock that exceeds $15,000. This can be

accomplished through a standing order with his broker to sell when the value of the stock exceeds $15,000.

(b) *De minimis exemption for matters affecting nonparties.* An employee may participate in any particular matter involving specific parties in which the disqualifying financial interest arises from the ownership by the employee, his spouse, or minor children of securities issued by one or more entities that are not parties to the matter but that are affected by the matter, if:

(1) The securities are publicly traded, or are long-term Federal Government or municipal securities; and

(2) The aggregate market value of the holdings of the employee, his spouse and minor children in the securities of all affected entities (including securities exempted under paragraph (a) of this section) does not exceed $25,000.

Example 1 to paragraph (b): A Food and Drug Administration advisory committee is asked to review a new drug application from Alpha Drug Co. for a new lung cancer drug. A member of the advisory committee owns $20,000 worth of stock in Mega Drug Co., which manufactures the only similar lung cancer drug on the market. If approved, the Alpha Drug Co.'s drug would directly compete with the drug sold by the Mega Drug Co., resulting in decreased sales of its lung cancer drug. The committee member may participate in the review of the new drug.

(c) * * *

Example 1 to paragraph (c): * * *

* * * * *

6. Section 2640.204 is amended by revising Example 1 which follows the section to read as follows:

§ 2640.204 Prohibited financial interests.

* * * * *

Example 1 to § 2640.204: The Office of the Comptroller of the Currency (OCC), in a regulation that supplements part 2635 of this chapter, prohibits certain employees from owning stock in commercial banks. If an OCC employee purchases stock valued at $2,000 in contravention of the regulation, the exemption at § 2640.202(a) for interests arising from the ownership of no more than $15,000 worth of publicly traded stock will not apply to the employee's participation in matters affecting the bank.

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1437

RIN 0560–AG20

Noninsured Crop Disaster Assistance Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Commodity Credit Corporation (CCC) amends the regulations with respect to the Noninsured Crop Disaster Assistance Program (NAP). This interim rule amends the NAP regulations to remove area requirements, announce new requirements regarding the filing of applications, payment of service fees, and reporting of crop acreage, yield, and production. These regulatory amendments are designed to improve the overall operation of the program and to conform the regulations with changes to the program made in recent legislation.

DATES: The rule is effective March 19, 2002. Comments must be received by April 18, 2002, to be assured of consideration.

ADDRESSES: Comments should be addressed to Steve Peterson, Chief, Noninsured Assistance Programs Branch (NAPB); Production, Emergencies, and Compliance Division (PECD); Farm Service Agency (FSA); United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0517; e-mail *Steve_Peterson@wdc.fsa.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Steve Peterson, Chief, Noninsured Assistance Programs Branch (NAPB); Production, Emergencies, and Compliance Division (PECD); Farm Service Agency (FSA); United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW, Washington, DC 20250–0517; telephone (202) 720–5172; facsimile (202) 690–3646; e-mail *StevePeterson@wdc.fsa.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule is issued in conformance with Executive Order 12866 and has been determined to be economically significant and therefore has been reviewed by the Office of Management and Budget (OMB). A summary of the Cost-Benefit Assessment follows the Background section.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because neither FSA nor the CCC is required by 5 U.S.C. 533 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

Executive Order 12988

The rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. Before any judicial action may be brought concerning the provisions of this rule, the administrative remedies must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, subpart V, published at 49 FR 29115 (June 24, 1983). Unfunded Mandates Reform Act of 1995 (UMRA)

This rule contains no Federal mandates under the regulatory provisions of Title II of the UMRA for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

This rule amends current regulations to reference changes to NAP made by amendments to section 196 of the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act). The Paperwork Reduction Act generally requires a 60-day public comment period and OMB review of the information collections before regulations may be promulgated. However, section 161 of the 1996 Act provided that the Secretary issue regulations without regard to the Paperwork Reduction Act. A separate notice announcing a 60-day comment period will be published and OMB approval sought under the provisions of 44 U.S.C. chapter 35.

Executive Order 12612

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparations of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of Government.

Federal Assistance Programs

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Background

This rule re-writes, in their entirety, the Noninsured Crop Disaster Assistance Program (NAP) regulations to improve the overall administration of the program and to conform with statutory amendments to section 196 of the Federal Agriculture Improvement and Reform Act of 1996 made in section 109 of the Agricultural Risk Protection Act of 2000 (Pub. L. 106–224; June 20, 2000) (''ARPA 2000''). Section 171(b)(2)(g) of ARPA 2000 specified that the amendments to NAP would not be effective until the 2001 crop year. Also, prior to enactment of ARPA 2000, section 101 of the Omnibus Consolidated Appropriations Act, 2000 (Pub. L. 106–113; November 29, 1999) provided that beginning with the 1999 crop year CCC should provide up to $20 million to eligible producers without regard to the regulatory requirement for area crop losses. CCC put into place procedures to identify and provide assistance to producers who would have been eligible for assistance if not for the area crop loss requirement.

The changes made to NAP by ARPA 2000 were significant and involved major changes in the way producers will qualify or retain eligibility for NAP. There, the NAP statute was amended to remove the area crop loss requirement entirely. In addition, the statute has been amended to require an application and collection of a service fee. Producers now must apply for NAP no later than the application closing date announced by the Secretary. Additionally, producers must now pay a service fee of $100 per crop per administrative county, or $300 per producer per administrative county, up to a maximum, for all counties for the producer, of $900. Service fees for limited resource producers may be waived. CCC will use the definition of limited resource farmer provided in FCIC regulations found at 7 CFR 457.8 for the purpose of defining limited resource producers. Typically, under current regulations, limited resource producers have an annual gross income of $20,000 or less from all sources for the last 2 years, or farm less than 25 acres with most of their income of $20,000 or less per year coming from farming. This criteria, for NAP purposes, is subject to change as 7 CFR 457.8 is amended. Because of the timing involved, for certain 2001 and 2002 crops, special time periods have been created for submission of the application for NAP coverage and service fees. To maintain eligibility for 2001 and 2002 crops, producers who otherwise would be late in filing the application must apply and pay the service fee within 30 days of publication of this rule. NAP continues to require crop reporting as a condition of eligibility. Every year producers must provide records of crop acreage, yields, and production.

As a condition of eligibility, NAP benefits are earned only when a loss or prevented planting occur as a result of an eligible loss condition (disaster) as opposed to some other reason. It is a producer's responsibility to show that the producer's claimed loss or prevented planting was the result of an eligible cause. Accordingly, for clarification purposes, this rule better describes (without any change to policy) those loss conditions and crops for which benefits under this part might be exacted. For example, a definition of ''controlled environment'' has been added; the definition of ''natural disaster'' has been removed and the term is discussed under § 1437.9 ''Causes of Loss;'' sections were added discussing several crops for which coverage is available; and generally, language in various sections have been amended for clarity. Effective for the 2002 and succeeding crop years the exclusion of unseeded forage on Federal- and State-owned land as an eligible crop is removed.

Cost-Benefit Assessment

NAP expenditures for crop years 1996 through 1998 averaged about $43 million per year. Outlays generally occur in the fiscal year following the crop year. The President's budget baseline (prior to enactment of Public Law 106–224) assumed the NAP program would cost $90 million each year. Outlays have never reached that expectation, in part due to generally favorable weather conditions throughout the U.S. and to the reluctance of producers to report acreage and production when the area loss threshold had not been triggered. But that very reluctance to report makes it difficult for the area loss threshold to trigger.

The 2000 Act, by removing the area trigger requirement, removed this impediment. That is, if a producer has the requisite crop loss (50 percent or more), the producer will be eligible to receive NAP benefits. The producer no longer has to farm in an area where the yield for the crop had to fall below 65 percent of the expected area yield to receive a payment.

Participation in the 1999 Crop Disaster Program (CDP) provides some insight into the cost of the NAP program. The CDP provided payments to producers who suffered a 35-percent crop loss. Eligible crops include insurable crops (crops eligible for crop insurance) and non-insurable crops (crops eligible for NAP). Total claims for the CDP program were about $2 billion (before application of the payment limit and before the national factor). Out of the $2 billion, about $375 million was paid out for crops that are eligible for NAP; the remaining funds went to crops that were eligible for crop insurance.

The CDP paid producers for quantity losses in excess of 35 percent at 65 percent of the market price. The NAP program pays producers for quantity losses in excess of 50 percent at 55 percent of the market price. When the CDP applications were screened for those producers meeting the more restrictive loss requirements and adjustments were made in the payment rates, the $375 million in benefits for non-insured crops under CDP dropped to about $150 million under the NAP.

The number of NAP participants ranged from a low of about 6,500 in 1997 to a high of over 25,000 in 1996. More than 50,000 producers received CDP benefits for crops eligible for NAP. Each producer received, on average, payments for about two crops. If 75,000 producers were to enroll in the new NAP, averaging two crops per producer, about $15 million would be collected annually in service fees.

The total cost of NAP would be $147 million annually ($162 million in benefits less the $15 million in service fees). Compared with projected NAP outlays in the President's Budget of $90 million, CCC outlays would increase by $57 million annually. Compared with average NAP outlays of $43 million in fiscal years 1997 to 1999, CCC outlays would increase by $104 million annually. The outlays would partially offset lower income due to the weather-related crop losses. Farm income would increase by a like amount.

The above cost projections assume that unseeded forage on Federal and State lands is eligible for NAP benefits.

It is estimated that 62 million acres of unseeded forage on Federal and State lands would become eligible under the new rule. If 10 percent of these acres could not be grazed due to a natural disaster, CCC outlays would increase by $12 million.

This rule is issued as an interim rule and will be effective while comments are being received. As this rule implements provisions of the Federal Agriculture Improvement and Reform Act of 1996, section 161 of that Act exempts this rule from prior comment. Likewise section 172 of ARPA 2000 suggests quick implementation. Delay in implementing the new statutory law would be contrary to the public interest and law. Likewise, as to 5 U.S.C. 808 it has been determined for the same reasons that a lay-over for Congressional review would be contrary to public interest. Similarly, for those amendments not compelled by recent statutory changes, the improvement of the program should benefit the overall administration of the program and corrections based on comments can be made as needed. Accordingly, it has been determined that it would be contrary to the public interest to withhold those changes and those changes likewise are made effective immediately. All of the corrections and amendments are set out in the full text of 7 CFR part 1437 in this interim rule. Comments, favorable and unfavorable, are solicited on all aspects of the rule.

List of Subjects in 7 CFR Part 1437

Agricultural commodities, Disaster Assistance, Reporting and record keeping requirements.

For the reasons set out above, 7 CFR part 1437 is revised to read as follows:

PART 1437—NONINSURED CROP DISASTER ASSISTANCE PROGRAM

Subpart A—General Provisions

Sec.

Subpart B—Determining Yield Coverage Using Actual Production History

Subpart C—Determining Coverage for Prevented Planted Acreage

Subpart D—Determining Coverage Using Value

Subpart E—Determining Coverage of Forage Intended for Animal Consumption

Authority: 15 U.S.C. 714 *et seq.*; and 7 U.S.C. 7333.

Subpart A—General Provisions

§ 1437.1 Applicability.

(a) The Noninsured Crop Disaster Assistance Program (NAP) is intended to provide eligible producers of eligible crops coverage equivalent to the catastrophic risk protection level of crop insurance. NAP is designed to help reduce production risks faced by producers of commercial crops or other agricultural commodities. NAP will reduce financial losses that occur when natural disasters cause a catastrophic loss of production or where producers are prevented from planting an eligible crop.

(b) The provisions contained in this part are applicable to eligible producers and eligible crops for which catastrophic coverage under section 508(b) the Federal Crop Insurance Act (7 U.S.C. 1508(b)), as amended, or its successors, is not available.

(c) The regulations of this part are applicable to the 2001 and subsequent crop years.

§ 1437.2 Administration.

(a) NAP is administered under the general supervision of the Executive Vice-President, CCC (who also serves as Administrator, Farm Service Agency), and shall be carried out by State and county FSA committees (State and county committees).

(b) State and county committees, and representatives and their employees, do not have authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee shall take any action required by the regulations of this part that the county committee has not taken. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee that is not in accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No provision or delegation to a State or county committee shall preclude the Executive Vice-President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator may authorize State and county committees to waive or modify deadlines (except statutory deadlines) in cases where lateness to file does not adversely affect operation of the program.

§ 1437.3 Definitions.

The definitions and program parameters set out in this section shall be applicable for all purposes of administering the Noninsured Crop Disaster Assistance Program provided for in this part. Although the terms defined in part 718 of this title and part 1400 of this chapter shall also be applicable, the definitions set forth in this section shall govern for all purposes of administering the Program.

Actual Production History (APH) means the farm's operative production history established in accordance with subpart B of this part.

Administrative county office means the county FSA office designated to make determinations, handle official records, and issue payments for the producer in accordance with 7 CFR part 718.

Animal Unit Days (AUD) means an expression of expected or actual stocking rate for pasture or forage.

Application Closing Date means the last date, as determined by CCC, producers can submit an application for coverage for noninsured crops for the specified crop year.

Catastrophic coverage means a catastrophic risk protection (CAT) level

of crop insurance available in accordance with section 508(b) of the Federal Crop Insurance Act, as amended.

Catastrophic loss means—

(1) Loss, as the result of an eligible cause of loss, that entails as determined by CCC:

(i) Prevented planting of greater than 35 percent of the intended crop acreage; a yield loss of greater than 50 percent of the approved yield; or value loss of greater than 50 percent of the pre-disaster value; or

(ii) AUD loss of greater than 50 percent of the expected AUD.

(2)The quantity will not be reduced for any quality consideration unless a zero value is established.

Controlled environment means, with respect to those crops for which a controlled environment is expected to be provided, including but not limited to ornamental nursery, aquaculture (including ornamental fish), and floriculture, an environment in which everything that can practicably be controlled with structures, facilities, growing media (including but not limited to water, soil, or nutrients) by the producer, is in fact controlled by the producer.

Crop year means the calendar year in which the crop is normally harvested or in which the majority of the crop would have been harvested. For value loss and other specific commodities, see the applicable subpart and section of this part. For crops for which catastrophic coverage is available, the crop year will be as defined by such coverage.

Fiber means a slender and greatly elongated natural plant filament, e.g. cotton, flax, etc. used in manufacturing, as determined by CCC.

Final planting date means the date which marks the end of the planting period for the crop and in particular the last day, as determined by CCC, the crop can be planted to reasonably expect to achieve 100 percent of the expected yield in the intended harvest year or planting period.

Food means a material consisting essentially of protein, carbohydrates, and fat used in the body to sustain growth, repair, and vital processes including the crops used for the preparation of food, as determined by CCC.

Good farming practices means the cultural practices generally used for the crop to make normal progress toward maturity and produce at least the individual unit approved yield. These practices are normally those recognized by Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions.

Harvested means the producer has removed the crop from the field by hand, mechanically, or by grazing of livestock. The crop is considered harvested once it is removed from the field and placed in a truck or other conveyance or is consumed through the act of grazing. Crops normally placed in a truck or other conveyance and taken off the crop acreage, such as hay are considered harvested when in the bale, whether removed from the field or not.

Industrial crop means a commercial crop, or other agricultural commodity utilized in manufacturing. Industrial crops include caster beans, chia, crambe, crotalaria, cuphea, guar, guayule, hesperaloe, kenaf, lesquerella, meadowfoam, milkweed, plantago, ovato, sesame and other crops specifically designated by CCC.

Intended Use means for a crop or a commodity, the end use for which it is grown and produced.

Multiple planted means the same crop is planted and harvested during two or more distinct planting periods in the same crop year, as determined by CCC.

Normal harvest date means the date harvest of the crop is normally completed in the administrative county, as determined by CCC.

Seed crop means propagation stock commercially produced for sale as seed stock for eligible crops.

Seeded forage means forage on acreage mechanically seeded with forage vegetation at regular intervals, at least every 7 years, in accordance with good farming practices.

T-Yield means the yield which is based on the county expected yield of the crop for the crop year and is used on an adjusted or unadjusted basis to calculate the approved yield for crops covered under the NAP when less than four years of actual, assigned, or appraised yields are available in the APH data base.

Transitional yield means an estimated yield of that name provided in the Federal Crop Insurance Corporation (FCIC) actuarial table which is used to calculate an average/approved APH yield for crops insured under the Federal Crop Insurance Act when less than four years of actual, temporary, and/or assigned yields are available on a crop by county basis.

§ 1437.4 Eligibility.

(a) Noninsured crop disaster assistance for low yield or prevented planting is available to producers of eligible commercial crops or other agricultural commodities, as determined by CCC, for which:

(1) Catastrophic coverage is not available; or

(2) Catastrophic coverage is available in the administrative county, however, the eligible commercial crop or other agricultural commodity is affected by an eligible cause of loss, as determined by CCC, that is not covered by the catastrophic coverage.

(b) Noninsured crop disaster assistance for low yields or prevented planting is available only when loss of the crop occurs as a result of an eligible cause of loss, as determined by CCC.

(c) When other conditions are met, NAP may be available for an eligible loss of:

(1) Any commercial crop grown for food, excluding livestock and their by-products;

(2) Any commercial crop planted and grown for livestock consumption, including but not limited to grain and forage crops; except for the 2001 and preceding crop years assistance for forage produced on Federal- and State-owned lands is available only for seeded forage.

(3) Any commercial crop grown for fiber, excluding trees grown for wood, paper, or pulp products; and

(4) Any commercial production of:

(i) Aquacultural species (including ornamental fish);

(ii) Floricultural crops;

(iii) Ornamental nursery plants;

(iv) Christmas tree crops;

(v) Turfgrass sod;

(vi) Industrial crops; and

(vii) Seed crops.

§ 1437.5 Coverage period.

(a) The coverage period is the time during which coverage is available against loss of production of the eligible crop as a result of natural disaster.

(b) The coverage period for annual crops, including annual forage crops, begins the later of 30 calendar days after the date the application for coverage is filed; or the date the crop is planted, not to exceed the final planting date; and ends on the earlier of the date harvest is complete; the normal harvest date of the crop in the area; the date the crop is abandoned; or the date the crop is destroyed.

(c) Except as otherwise specified in this part, the coverage period for biennial and perennial crops begins 30 calendar days after the application closing date; and ends as determined by CCC.

(d) Except as otherwise specified in this part, the coverage period for value loss crops, including ornamental nursery, aquaculture, Christmas tree crops, ginseng, and turfgrass sod; and other eligible crops, including

floriculture and mushrooms begins 30 calendar days after the application closing date; and ends the last day of the crop year, as determined by CCC.

(e) The coverage period for honey begins 30 calendar days after the application closing date and ends the last day of the crop year, as determined by CCC.

(f) The coverage period for maple sap begins 30 calendar days after the application closing date and ends on the earlier of the date harvest is complete; or the normal harvest date.

(g) For biennial and perennial forage crops the coverage period begins the later of 30 calendar days after the application closing date; for first year seedings, the date the crop was planted; or the date following the normal harvest date. The coverage ends on the normal harvest date of the subsequent year.

§ 1437.6 Application for coverage and service fee.

(a) With respect to each crop, commodity or acreage, producers must file an application for coverage under this part no later than the application closing date.

(b) The service fee must be paid at the time of the application. The service fee is $100 per crop per administrative county, up to $300 per producer per administrative county, but not to exceed $900 per producer.

(c) The service fee will be applied per administrative county by crop definition and planting period, as determined by CCC.

(d) Limited resource farmers may request that the service fee be waived and must request such a waiver prior to, or at the same time the application for coverage is filed. For this purpose, a ''limited resource farmer'' shall be given the meaning assigned by 7 CFR 457.8.

(e) For 2001 and 2002 crops for which the application closing date would normally have been established prior to March 19, 2002, or established within 60 calendar days after March 19, 2002, producers must within 30 calendar days after March 19, 2002:

(1) Submit a 2001 or 2002 crop application for coverage, as applicable, and pay the applicable service fee; and

(2) Certify the 2000 and 2001 crop year production for the crop, if applicable.

(f) For 2001 and 2002 crops which have suffered damage or loss, producers must, in addition to paragraph (e)(1) of this section, have complied with all requirements of this part prior to its revision on March 19, 2002, (and contained in the 7 CFR, parts 1200 to 1599, edition revised as of January 1, 2002) including having filed a timely:

(1) Report of acreage;

(2) Notice of loss; and

(3) Application for payment.

§ 1437.7 Records.

(a) Producers must maintain records of crop acreage, acreage yields, and production for the crop for which an application for coverage is filed in accordance with § 1437.5. For those crops or commodities for which it is impractical, as determined by CCC, to maintain crop acreage, yields or production, producers must maintain records, in addition to the available records required by this section, as may be required in subparts C, D and E, of this part. Producers must retain records of the production and acreage yield for a minimum of 3 years for each crop for which an application for coverage is filed in accordance with § 1437.6. Producers may be selected on a random or targeted basis and be required to provide records acceptable to CCC to support the certification provided. For each crop for which producers file an application for payment in accordance with § 1437.10 that is harvested, producers must provide documentary evidence of production, acceptable to CCC, and the date harvest was completed. Such documentary evidence must be filed not later than the application closing date for the crop in the subsequent crop year. Records of a previous crop year's production for inclusion in the actual production history database used to calculate an approved yield for the current crop year must be certified by the producer no later than the application closing date for the crop in the current crop year. Production data provided after the application closing date in the current crop year for the crop may be included in the actual production history data base for the calculation of subsequent approved yield calculations if accompanied by acceptable records of production as determined by CCC. Records of production acceptable to CCC may include:

(1) Commercial receipts, settlement sheets, warehouse ledger sheets, or load summaries if the eligible crop was sold or otherwise disposed of through commercial channels provided the records are reliable or verifiable as determined by CCC; and

(2) Such documentary evidence such as contemporaneous measurements, truck scale tickets, and contemporaneous diaries, as is necessary in order to verify the information provided if the eligible crop has been fed to livestock, or otherwise disposed of other than through commercial channels, provided the records are reliable or verifiable as determined by CCC. If the crop will be disposed of through retail sales, such as: roadside stands, u-pick, etc. and the producer will not be able to certify acceptable records of production, the producer must request an appraisal of the unit acreage prior to harvest of the crop acreage.

(b) Producers must provide verifiable evidence, as determined by CCC, of:

(1) An interest in the commodity produced or control of the crop acreage on which the commodity was grown at the time of disaster; and

(2) The authority of the applicable individual to execute program documents.

(c) Reports of acreage planted or intended but prevented from being planted must be provided to CCC at the administrative FSA office for the acreage no later than the date specified by CCC for each crop and location. Reports of acreage filed beyond the date specified by CCC for the crop and location may, however, be considered timely filed if all the provisions of 7 CFR 718.103 are met. In the case of a crop-share arrangement, all producers will be bound by the acreage report filed by the landowner or operator unless the producer files a separate acreage report prior to the date specified by CCC for the crop and location. Reports of acreage planted or intended and prevented from being planted must include all of the following information:

(1) Number of acres of the eligible crop in the administrative county (for each planting in the event of multiple planting) in which the producer has a share;

(2) Zero acres planted when the producer's crop for which an application for coverage was filed, is not planted;

(3) The producer's share of the eligible crop at the time an application for coverage was filed;

(4) The FSA farm serial number;

(5) The identity of the crop, practices, intended uses, and for forage crops, the predominant species or type and variety of the vegetation;

(6) The identity of all producers sharing in the crop;

(7) The date the crop was planted or planting was completed, including the age of the perennial crops; and

(8) The acreage intended but prevented from being planted.

(d) Producers receiving a guaranteed payment for planted acreage, as opposed to receiving a payment only upon delivery of the production must provide documentation of any written or verbal contract or arrangement with the buyer to CCC. Net production, as determined

by CCC, may be adjusted upward by the amount of production corresponding to the amount of the contract payment received.

(e) Producers must provide documentation of any salvage value received by or made available for the quantity of the crop or commodity that cannot be marketed or sold in any market, as determined by CCC and any value received by or made available for a secondary use of the crop or commodity.

(f) Producers requesting payment under this part must maintain records which substantiate gross revenue for the tax year preceding the crop year for which coverage is requested.

(g) Producers requesting a waiver of service fees as a limited resource producer must maintain records which substantiate annual gross income for the two tax years preceding the crop year for which coverage is requested.

§ 1437.8 Unit division.

Except as determined by CCC, a unit shall be all acreage of the eligible crop in the administrative county operated by the same producer(s). In cases where the owners of land are also producers, units shall be further divided based on ownership interest of the land.

§ 1437.9 Causes of loss.

(a) To be eligible for benefits under this part, crops must be damaged or prevented from being planted by drought, flood or other natural disasters and conditions related thereto. Not all named perils are eligible causes of loss for all crops. Eligible causes of loss include:

(1) Damaging weather occurring prior to or during harvest, including but not limited to drought, hail, excessive moisture, freeze, tornado, hurricane, excessive wind, or any combination thereof;

(2) Adverse natural occurrence occurring prior to or during harvest, such as earthquake, flood, or volcanic eruption; and

(3) A related condition, including but not limited to heat, insect infestation, or disease, which occurs as a result of an adverse natural occurrence or damaging weather occurring prior to or during harvest, that directly causes, accelerates, or exacerbates the destruction or deterioration of an eligible crop, as determined by the Secretary.

(b) Ineligible causes of loss include but are not limited to:

(1) Factors or circumstances that are not the result of an eligible cause of loss affecting specific crop or commodity;

(2) The negligence or malfeasance of the producer;

(3) The failure of the producer to reseed to the same crop in those areas and under such circumstances where it is customary to reseed;

(4) Failure of the producer to follow good farming practices, as determined by CCC;

(5) Water contained or released by any governmental, public, or private dam or reservoir project, if an easement exists on the acreage affected for the containment or release of the water;

(6) Failure or breakdown of irrigation equipment or facilities; or

(7) Except for tree crops and perennials, inadequate irrigation resources at the beginning of the crop year;

(8) A loss of inventory (or yield as applicable) of aquiculture (including ornamental fish), floriculture or ornamental nursery stemming from drought or any failure to provide water, soil, or growing media to such crop for any reason;

(9) Any failure to provide a controlled environment or exercise good nursery practices where such controlled environment or practices are a condition of eligibility under this part.

§ 1437.10 Notice of loss and application for payment.

(a) At least one producer having a share in the unit must provide a notice of loss to CCC in the administrative FSA office for the unit, within:

(1) For prevented planting claims, 15 calendar days after the final planting date,

(2) For low yield claims and allowable value loss, the earlier of:

(i) 15 calendar days after the damaging weather or adverse natural occurrence, or date loss of the crop or commodity becomes apparent for low yield claims; and

(ii) 15 calendar days after the normal harvest date.

(b) For each crop for which a notice of loss is filed, producers must provide the following information:

(1) Crop by type or variety, as applicable;

(2) The cause of the crop damage;

(3) Date the loss occurred, as applicable;

(4) Date the damage or loss became apparent;

(5) The existence of a guaranteed payment through a contract or agreement for planted acreage as opposed to delivery of production, if one exists;

(6) Type of crop loss occurred, e.g. prevented planting or low yield;

(7) Practices employed to grow the crop, e.g. irrigated or non-irrigated;

(8) For prevented planting:

(i) Total acreage intended to be planted to the crop in the administrative county;

(ii) Total acreage planted by the producer to the crop in the administrative county;

(iii) Whether a purchase, delivery, or arrangement for purchase or delivery was made for seed, chemicals, fertilizer, etc; and

(iv) What and when land preparation measures, e.g. cultivation, etc. were completed and indicate what has been done or will be done with the acreage, e.g. abandoned, replanted, etc.

(9) For low yield:

(i) Total acreage planted by the producer to the crop in the administrative county;

(ii) Total acreage of the crop in the administrative county affected;

(iii) What and when land preparation measures and practices, e.g. cultivation, planting, irrigated, etc. were completed before and after the loss; and

(iv) What will be done with the affected crop acreage, e.g. harvested, destroyed and replanted to a different crop, abandoned, etc.

(10) Any such other information requested by CCC to establish the loss.

(c) A notice of loss provided beyond the time specified in paragraph (a) of this section may be considered timely filed if, at the discretion of CCC, provided at such time to permit an authorized CCC representative the opportunity to:

(1) Verify the information on the notice of loss by inspection of the specific acreage or crop involved; and

(2) Determine, based on information obtained by inspection of the specific acreage or crop involved, that an eligible cause of loss, as opposed to other circumstance, caused the claimed damage or loss.

(d) Crop acreage that will not be harvested, i.e. acreage that is to be abandoned or destroyed or in the case of forage acreage intended to be mechanically harvested but grazed, must be left intact and producers must request, in the administrative FSA office for the acreage, a crop appraisal and release of crop acreage by a FCIC- or CCC-approved loss adjustor:

(1) Prior to destruction or abandonment of the crop acreage; or

(2) No later than the normal harvest date, as determined by CCC.

(e) Producers must apply for payments prior to the earlier of the:

(1) Date an application for coverage is filed for the crop for the subsequent crop year; or

(2) Application closing date for the crop for the subsequent crop year.

§ 1437.11 Average market price and payment factors.

(a) An average market price will be used to calculate assistance under this part and will be:

(1) A dollar value per the applicable unit of measure of the eligible crop;

(2) Determined on a harvested basis without the inclusion of transportation, storage, processing, marketing, or other post-harvest expenses, as determined by CCC;

(3) Comparable with established FCIC prices; and

(4) Determined, as practicable, for each intended use of a crop within a State for a crop year.

(b) For these purposes, where needed, an Animal-unit-days (AUD) value will be based on the national average price of corn and the daily requirement of 13.6 megacalories of net energy for maintenance of 1 animal unit.

(c) Payment factors will be used to calculate assistance for crops produced with significant and variable harvesting expenses that are not incurred because the crop acreage was prevented planted or planted but not harvested, as determined by CCC.

(d) An adjusted market price will be calculated based on the provisions in this section and others as may apply. A final payment price will be determined by multiplying, as appropriate, the average market price by the applicable payment factor (i.e. harvested, unharvested, or prevented planting) by 55 percent or, by multiplying the applicable AUD (as adjusted, if adjusted) by 55 percent.

§ 1437.12 Crop definition.

(a) For the purpose of providing benefits under this part, CCC will, at its discretion, define crops as specified in this section.

(b) CCC may separate or combine types and varieties as a crop when specific credible information as determined by CCC is provided showing the crop of a specific type or variety has a significantly different or similar value when compared to other types or varieties, as determined by CCC.

(c) CCC may recognize two or more different crops planted on the same acreage intended for harvest during the same crop year as two or more separate crops. The crop acreage may include a crop intended for harvest before planting of a succeeding crop or a succeeding crop interseeded with the preceding crop prior to intended harvest of the preceding crop. The acreage must be in an area where the practice is recognized as a good farming practice, as determined by CCC, and all crops are recognized by CCC as able to achieve the expected yield, as determined by CCC.

(d) CCC may consider crop acreage that is harvested more than once during the same crop year from the same plant as a single crop. The acreage must be in an area where the practice is recognized as a good farming practice, as determined by CCC.

(e) CCC may consider each planting period of multiple planted acreage as a separate crop. The acreage must be in an area where the practice is recognized as a good farming practice, as determined by CCC.

(f) CCC may define forage as separate crops according to the intended method of harvest, either mechanical harvest or grazed.

(g) Forage acreage intended to be grazed may be further defined as warm and cool season forage crops.

(h) Forage acreage intended to be mechanically harvested may be defined as a separate crop from grazed forage and may be separated based upon the commodity used as forage, to the extent such separation is allowed under paragraph (b) of this section.

(i) Crop acreage intended for the production of seed may be considered a separate crop from other intended uses, as determined by CCC, if all the following criteria apply:

(1) The specific crop acreage is seeded, or intended to be seeded, with an intent of producing commercial seed as its primary intended use;

(2) There is no possibility of other commercial uses of production from the same crop without regard to market conditions; and

(3) The growing period of the specific crop acreage is uniquely conducive to the production of commercial seed and not conducive to the production of any other intended use of the crop, (e.g. vernalization in a biennial crop such as carrots and onions) and that accommodation renders the possibility of production for any other intended use of the crop improbable.

§ 1437.13 Multiple benefits.

(a) If a producer is eligible to receive payments under this part and benefits under any other program administered by the Secretary for the same crop loss, the producer must choose whether to receive the other program benefits or payments under this part, but shall not be eligible for both. The limitation on multiple benefits prohibits a producer from being compensated more than once for the same loss.

(b) The limitation on multiple benefits in paragraph (a) of this section shall not apply in any respect to Emergency Loans under subtitle C of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961 *et seq*).

(c) The restriction on multiple benefits does not relieve the producer from the requirements of making a production and acreage report.

(d) If the other USDA program benefits are not available until after an application for benefits has been filed under this part, the producer may, to avoid this restriction on such other benefits, refund the total amount of the payment to the administrative FSA office from which the payment was received.

§ 1437.14 Payment and income limitations.

(a) NAP payments shall not be made in excess of $100,000 per person per crop year under this part.

(b) NAP payments shall not be made to a person who has qualifying gross revenues in excess of $2 million for the most recent tax year preceding the year for which assistance is requested. Qualifying gross revenue means:

(1) With respect to a person who receives more than 50 percent of such person's gross income from farming, ranching, and forestry operations, the annual gross income for the taxable year from such operations; and

(2) With respect to a person who receives 50 percent or less of such person's gross income from farming, ranching, and forestry operations, the person's total gross income for the taxable year from all sources.

(c) CCC will pay, for up to one year, simple interest on payments to producers which are delayed. Interest will be paid on the net amount ultimately found to be due, and will begin accruing on the 31st day after the date the producer signs, dates, and submits a properly completed application for payment on the designated form, or the 31st day after a disputed application is adjudicated. Interest will be paid unless the reason for failure to timely pay is due to the producer's failure to provide information or other material necessary for the computation of payment, or there was a genuine dispute concerning eligibility for payment.

(d) Rules set out in 7 CFR part 1400 shall apply in implementing the restrictions of this section.

§ 1437.15 Miscellaneous provisions.

(a) To be eligible for benefits under this part, producers must be in compliance with the highly erodible land and wetlands provisions of part 12 of this title.

(b) The provisions of § 718.11 of this title, providing for ineligibility for

benefits for offenses involving controlled substances, shall apply.

(c) A person shall be ineligible to receive assistance under this part for the crop year plus two subsequent crop years if it is determined by the State or county committee or an official of FSA that such person has:

(1) Adopted any scheme or other device that tends to defeat the purpose of a program operated under this part;

(2) Made any fraudulent representation with respect to such program; or

(3) Misrepresented any fact affecting a program determination.

(d) All amounts paid by CCC to any such producer, applicable to the crop year in which a violation of this part occurs, must be refunded to CCC together with interest and other amounts as determined appropriate to the circumstances by CCC.

(e) All persons with a financial interest in the operation receiving benefits under this part shall be jointly and severally liable for any refund, including related charges, which is determined to be due CCC for any reason under this part.

(f) In the event that any request for assistance or payments under this part was established as result of erroneous information or a miscalculation, the assistance or payment shall be recalculated and any excess refunded with applicable interest.

(g) The liability of any person for any penalty under this part or for any refund to CCC or related charge arising in connection therewith shall be in addition to any other liability of such person under any civil or criminal fraud statute or any other provision of law including, but not limited to: 18 U.S.C. 286, 287, 371, 641, 651, 1001 and 1014; 15 U.S.C. 714m; and 31 U. S. C. 3729.

(h) The appeal regulations at parts 11 and 780 of this title apply to decisions made according to this part.

(i) Any payment or portion thereof to any person shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof.

(j) For the purposes of 28 U.S.C. 3201(e), the Secretary hereby waives the restriction on receipt of funds or benefits under this program but only as to beneficiaries who as a condition of such waiver agree to apply the benefits to reduce the amount of the judgement lien.

(k) The provisions of parts 1400, 1403 and 1404 of this chapter apply to NAP.

(l) In the case of death, incompetence or disappearance of any person who is eligible to receive payments under this part, such payments will be disbursed in accordance with part 707 of this title.

Subpart B—Determining Yield Coverage Using Actual Production History

§ 1437.101 Actual production history.

Actual production history will be used, except as otherwise indicated in this part, as the basis for providing noninsured crop disaster assistance.

§ 1437.102 Yield determinations.

(a) Payments based on yields shall be made on ''approved yields'', which shall be calculated based on the producer's APH for that period up to ten years for which, of the first time such a yield is calculated, there are consecutive years, beginning with the most recent completed year, of actual production history for the producer. If there are not four such consecutive years of history (excluding years when the crop was out of rotation), then such first ''approved yield'' shall be constructed by creating a four year history as provided for in this part. After the first such approved yield is constructed, years will be added to that history in the manner provided for in this section, dropping, as needed, previous years from the history to the extent that the current history would be a history or base of ten years. For the first approved yield, as needed to construct a four-year history, history will be supplied using T-yields, as set out in paragraph (b) of this section.

(b) The county expected yield:

(1) Is the ''T-yield'' for the crop, and is the Olympic average (disregarding the high and low yields) of yields in the county the 5 consecutive crop years immediately preceding the previous crop year. (Example: For the 2001 crop year, the base period would be 1995 through 1999).

(2) Will be the same as the FCIC transitional yield if crop insurance is available for the crop, (but not necessarily for the cause of loss if excluded by policy provisions), in the administrative county.

(3) Will be calculated so as to be comparable to the FCIC transitional yield most reasonable to the area if crop insurance was available for the crop (but not necessarily for the cause of loss) in contiguous counties, but not in the immediate county.

(c) Available historical information will be used to establish the county expected yields. Historical information is available from sources including, but is not limited to, National Agricultural Statistics Service data, Cooperative State Research, Education, and Extension Service records, Federal Crop Insurance Data, credible non-government studies, yields in similar areas, and reported actual yield data. Such yields will be based on the acreage intended for harvest.

(d) County expected yields may be adjusted for:

(1) Yield variations due to different farming practices in the administrative county such as: irrigated, nonirrigated, and organic practices; and

(2) Cultural practices, including the age of the planting when such practices are different from those used on acreage to establish the yield.

(e) A T-yield will be used in the actual production history database when less than four consecutive crop years of actual, assigned, or zero yields, as applicable, are available. For those producers who have land physically located in multiple counties and administered out of one county office, the T-yield for all land for the producer will be based on the administrative county's expected yield for that crop. Where a four-year base must be constructed for the producer's first approved yield because the producer does not have at least four consecutive years of actual history starting with the most recent year, then:

(1) If an approved yield had not previously been calculated for the crop and there are no production records available for the most recent crop year, or if there is no formula provided for the producer under paragraphs (e)(2) through (4) of this section, then the approved yield for the current crop year will be calculated on the simple average of 65 percent of the applicable T-yield for each of the four years of the constructed base;

(2) If certified acceptable production records are available for only the most recent crop year and there are no zero (credited) or assigned yields in the producer's history, the approved yield for the current crop year will be calculated on the simple average of the one actual yield plus 80 percent of the applicable T-Yield for the missing crop years.

(3) If certified acceptable production records are available for only the two most recent crop years and there are no zero (credited) or assigned yields in the APH database, the approved yield for the current crop year will be calculated on the simple average of the two actual yields plus 90 percent of the applicable T-yield for the missing years.

(4) If certified acceptable production records are available for only the three most recent crop years and there are no zero (credited) or assigned yields in the APH database, the approved yield will be calculated on the simple average of

the three actual yields plus 100 percent of the applicable T-Yield for the missing year.

(f) CCC will reduce unadjusted T-yields placed in the actual production history database when, as determined by CCC, an unadjusted T-yield does not accurately reflect the productive capability of specific crop acreage.

(g) An actual yield includes the total amount of harvested and appraised production on a per acre, or other basis, as applicable.

(h) Once an approved yield has been calculated for any year, then thereafter an assigned yield will be used to update or extend the producer's actual production history (or base) database when producers fail to certify a report of production after the approved yield was calculated and the following standards shall apply:

(1) The assigned one-year yield will be equal to 75 percent of the approved yield calculated for the most recent crop year for which producers do not certify a report of production.

(2) Producers may have only one assigned yield in the actual production history database.

(3) Producers may replace an assigned yield with an actual yield by providing a certification of production and production records for the applicable crop year in accordance with § 1437.7.

(4) If the acreage of a crop in the administrative county in which the unit is located for the crop year increases by more than 100 percent over any year in the preceding seven crop years, or significantly from the previous crop years, as determined by CCC, producers may not receive an assigned yield and will receive a zero credited yield, unless producers provide:

(i) Detailed documentation of production costs, acres planted, and yield for the crop year for which the producer is requesting assistance, or

(ii) If CCC determines those records are inadequate, proof that the eligible crop, had it been harvested, could have been marketed at a reasonable price.

(5) Notwithstanding paragraph (h)(4) of this section an assigned yield may be used if:

(i) The planted acreage for the crop has been inspected by a third party acceptable to CCC, or

(ii) The FSA county executive director, with the concurrence of the FSA state executive director, makes a recommendation for an exemption from the requirements and such recommendation is approved by CCC.

(6) A zero credited yield will be used to the extent provided for in paragraph (i) of this section.

(i) A zero credited yield will be placed in the actual production history database for each crop year, following the crop year containing an assigned yield, for which producers do not certify a report of production. A zero credited yield may be replaced with an actual yield by providing a certification of production and production records for the applicable crop year in accordance with § 1437.7.

(j) An approved yield is calculated as the simple average of a minimum of four, not to exceed a maximum of 10 consecutive crop year yields for the crops, or as determined by CCC and as provided in this section.

(1) If, for one or more actual production history crop years used to establish the approved yield, the actual or appraised yield is less than 65 percent of the current crop year T-yield due to losses incurred in a disaster year, as determined by CCC, producers may request CCC replace the applicable yield with a yield equal to 65 percent of the current crop year T-yield.

(2) If approved yields were calculated for any of the 1995 through 2000 crop years, and subsequently in that period production was not certified, producers may request CCC replace the missing yields for such years with yields equal to the higher of 65 percent of the current crop year T-yield or the missing crop years actual yield.

(3) If producers add land in the farming operation and do not have available production records for the added land CCC will calculate an approved yield for the new unit by utilizing the actual production history yields for the existing unit. In the event the crop suffers a loss greater than 50 percent of the initial approved yield for the crop year and unit acreage has increased by more than 75 percent of the historical average acreage, CCC may adjust the approved yield, as determined by CCC.

(k) If a producer is a new producer, the approved yield may be based on unadjusted T-Yields or a combination of actual yields and unadjusted T-Yields. A new producer is a person who has not been actively engaged in farming for a share of the production of the eligible crop in the administrative county for more than two APH crop years. Formation or dissolution of an entity which includes individuals with more than two APH crop years of production history during the base period does not qualify the new entity as a new producer for APH determination purposes.

(l) If producers qualify as a new producer and have produced the crop for 1 or 2 crop years, producers must provide to CCC at the administrative FSA office serving the area in which the crop is located, a certification and records of production for those crop years.

(m) Further adjustments may be made as necessary to accomplish the purposes of this program.

§ 1437.103 Determining payments for low yield.

(a) Except to the extent that the loss calculation provisions of other subparts apply, and subject to limitations set out elsewhere in this part and in this title and to the availability of funds, payments under this part shall be made on eligible crops with eligible losses by:

(1) Multiplying the total eligible acreage planted to the eligible crop by the producers share, and subject to provisions for specific crops provided elsewhere in this part;

(2) Multiplying the product of paragraph (a)(1) of this section by 50 percent of the approved yield per acre for the commodity for the producer.

(3) Subtracting net production of the total eligible acreage from the product of paragraph (a)(2) of this section;

(4) Multiplying the difference calculated under paragraph (a)(3) of this section by the final payment price calculated under § 1437.11, and then

(5) Subtracting the value of salvage and secondary use.

(b) Further adjustments may be made as needed to accomplish the purposes and goals of the program.

§ 1437.104 Honey.

(a) Honey production eligible for benefits under this part includes table and non-table honey produced commercially.

(b) All of a producer's honey will be considered a single crop, regardless of type or variety of floral source or intended use.

(c) The crop year for honey production is the calendar year, January 1 through December 31.

(d) In addition to filing a report of acreage in accordance with § 1437.7, honey producers must provide a record of colonies to CCC. The report of colonies must be filed before the crop year for which producers seek to maintain coverage. The report of colonies shall include:

(1) The address of the producer's headquarters and FSA farm serial number, if available;

(2) Names and shares of each person sharing in the honey produced from the unit;

(3) The number of all colonies of bees belonging to the unit;

(4) The names of counties in which colonies of bees are located as of the date of the report; and

(5) A certification of the number of colonies reported including all colonies from which production is expected.

(e) The honey unit shall consist of all the producer's bee colonies, regardless of location.

(f) Producers must designate a FSA office as the control office for the honey operation. Producers must complete the following actions only in the control office:

(1) File an application for coverage;

(2) File a report of colonies;

(3) Report total unit production; and

(4) Request to change a unit's control office.

(g) Actions that may be taken in any Administrative FSA office includes:

(1) Designating or selecting another control office; or

(2) Filing a notice of loss in accordance with § 1437.10.

(h) Producers must notify the control office designated in accordance with paragraph (f) of this section within 30 calendar days of the date of:

(1) Any changes in the total number of colonies; and

(2) The movement of any colonies into any additional counties.

(i) Payments will be based on the amount of losses for this community in excess of a 50 percent loss level at a rate determined in accord with this part and the authorizing legislation.

§ 1437.105 Maple sap.

(a) NAP assistance for maple sap is limited to maple sap produced on private property for sale as sap or syrup. Eligible maple sap must be produced from trees that:

(1) Are located on land the producer controls by ownership or lease;

(2) Are managed for production of maple sap;

(3) Are at least 30 years old and 12 inches in diameter; and

(4) Have a maximum of 4 taps per tree according to the tree's diameter.

(b) The crop year for maple sap production is the calendar year, January 1 through December 31.

(c) If producers file an application for coverage in accordance with § 1437.6, tree acreage containing trees from which maple sap is produced or is to be produced must be reported to CCC no later than the beginning of the crop year.

(d) In addition to the applicable records required under § 1437.7, producers must report the:

(1) Total number of eligible trees on the unit;

(2) Average size and age of producing trees; and

(3) Total number of taps placed or anticipated for the tapping season.

(e) A maximum county-expected-yield for maple sap shall be 10 gallons of sap per tap per crop year unless acceptable documentary evidence, as determined by CCC, is available to CCC to support a higher county-expected-yield.

(f) The average market price for maple sap must be established for the value of the sap before processing into syrup. If price data is available only for maple syrup, this data must be converted to a maple sap basis. The wholesale price for a gallon of maple syrup shall be multiplied by 0.00936 to arrive at the average market price of a gallon of maple sap.

(g) The actual production history for maple sap shall be recorded on the basis of gallons of sap per tap.

(h) The unit's expected production is determined by:

(1) Multiplying the number of taps placed in eligible trees; by

(2) The approved per tap yield as determined in accordance with § 1437.102.

(i) Payments will be based on the amount of losses for this community in excess of a 50 percent loss level at a rate determined in accord with this part and the authorizing legislation.

§§ 1437.106–1437.200 [Reserved]

Subpart C—Determining Coverage for Prevented Planted Acreage

§ 1437.201 Prevented planting acreage.

(a) Prevented planting is the inability to plant an eligible crop with proper equipment during the planting period as a result of an eligible cause of loss, as determined by CCC.

(b) The eligible cause of loss that prevented planting must have:

(1) Occurred after a previous planting period for the crop and

(2) Before the final planting date for the crop in the applicable crop year or in the case of multiple plantings, the harvest date of the first planting in the applicable planting period, and

(3) Generally affected other producers in the area, as determined by CCC.

(c) Producers must be prevented from planting more than 35 percent of the total eligible acreage intended for planting to the eligible crop and in the case of multiple planting, more than 35 percent of the total eligible acres intended to be planted within the applicable planting period.

(d) Eligible prevented planting acreage will be determined on the basis of the producer's intent to plant the crop acreage, and possession of, or access to, resources to plant, grow, and harvest the crop, as applicable.

(e) Acreage ineligible for prevented planting coverage includes, but is not limited to:

(1) Acreage which planting history or conservation plans indicate would remain fallow for crop rotation purposes; and

(2) Acreage used for conservation purposes or intended to be or considered to have been left unplanted under any program administered by USDA, including the Conservation Reserve and Wetland Reserve Programs.

§ 1437.202 Determining payments for prevented planting.

(a) Subject to limitations, availability of funds, and specific provisions dealing with specific crops, a payment for prevented planting will be determined by:

(1) Multiplying the producer's total eligible acreage intended for planting to the eligible crop by the producer's share;

(2) Multiplying the product of paragraph (a)(1) of this section by 65 percent;

(3) Subtracting the total acres planted from the product of paragraph (a)(2) of this section;

(4) Multiplying the product of paragraph (a)(3) of this section by 50 percent of the producer's approved yield;

(5) Multiplying the product of paragraph (a)(4) of this section by the final payment price for the producer's crop as calculated by the agency under § 1437.11.

(b) Yields for purposes of paragraph (a) of this section shall be calculated in the same manner as for low-yield claims.

§§ 1437.203–1437.300 [Reserved]

Subpart D—Determining Coverage Using Value

§ 1437.301 Value loss.

(a) Special provisions are required to assess losses and calculate assistance for a few crops and commodities which do not lend themselves to yield loss situations. Assistance for these commodities is calculated based on the loss of value at the time of disaster. The agency shall determine which crops shall be treated as value-loss crops, but unless otherwise announced, such crops shall be limited to those identified in §§ 1437.303 through 1437.309 as value loss crops. Lost productions of value loss crops shall be compensable only under this subpart.

(b) The crop year for all value loss crops is October 1 through September 30.

(c) Producers must file an application for coverage in accordance with § 1437.6, and must:

(1) Provide a report of the crop, commodity, and facility to CCC for the acreage or facility, in a form prescribed by CCC, no later than the beginning of the crop year.

(2) Maintain a verifiable inventory of the eligible crop throughout the crop year; and

(3) Provide an accurate accounting of the inventory, as required by CCC.

§ 1437.302 Determining payments.

Subject to all restrictions and the availability of funds, value loss payments for qualifying losses will be determined by:

(a) Multiplying the field market value of the crop before the disaster by 50 percent;

(b) Subtracting the sum of the field market value after the disaster and value of ineligible causes of loss from the result from paragraph (a)(1) of this section;

(c) Multiplying the result from paragraph (a)(2) of this section by the producer's share;

(d) Multiplying the result from paragraph (a)(3) of this section by 55 percent plus whatever factor deemed appropriate to reflect savings from non-harvesting of the damaged crop or other factors as appropriate;

(e) Multiplying the salvage value by the producer's share;

(f) Subtracting the result from paragraph (a)(5) of this section from the result from paragraph (a)(4) of this section.

§ 1437.303 Aquaculture, including ornamental fish.

(a) Aquaculture is a value loss crop and is compensable only in accord with restrictions set in this section. Eligible aquacultural species shall only include:

(1) Any species of aquatic organisms grown as food for human consumption as determined by CCC.

(2) Fish raised as feed for other fish that are consumed by humans; and

(3) Ornamental fish propagated and reared in an aquatic medium.

(b) The aquacultural facility must be:

(1) A commercial enterprise on private property;

(2) Owned or leased by the producer, with readily identifiable boundaries; and

(3) Managed and maintained using good aquacultural growing practices.

(c) Producers must:

(1) Ensure adequate and proper flood prevention, growing medium, fertilization or feeding, irrigation and water quality, predator control, and disease control; and

(2) Have control of the waterbed.

(d) Eligible aquacultural species must be:

(1) Placed in the facility and not be indigenous to the facility; and

(2) Kept in a controlled environment; and

(3) Planted or seeded in containers, wire baskets, net pens, or similar device designed for the protection and containment of the seeded aquacultural species.

(e) In the crop year in which a notice of loss is filed, producers may be required, at the discretion of CCC, to provide evidence that the aquacultural species are produced in a facility in accordance with paragraphs (b), (c) and (d) of this section.

§ 1437.304 Floriculture.

(a) Floriculture, except for seed crops as specified in paragraph (d) of this section, is a value loss crop and is compensable only in accord with restrictions set in this section. Eligible floriculture shall be limited to commercial production of:

(1) Field-grown flowers, including flowers grown in containers or other growing medium maintained in a field setting according to industry standards, as determined by CCC; and

(2) Tubers and bulbs, for use as propagation stock of eligible floriculture plants; and

(3) Seed for propagation of eligible floriculture plants.

(b) Floriculture does not include flowering plants indigenous to the location of the floriculture facility or acreage.

(c) Eligible floriculture must be grown in a region or controlled environment conducive to the successful production of flowers, tubers, and bulbs, as determined by CCC.

(d) Claims on losses on the production of flower seed for propagation of eligible floriculture plants will not be treated under ''value loss'' rules, but under the rules for normal production low yield crops under subpart B of this part.

(e) The facility or acreage for eligible floriculture must be managed and maintained using good floriculture growing practices. At a minimum, producers are responsible for providing a controlled environment and must ensure adequate and proper fertilization, irrigation, weed control, insect and disease control, and rodent and wildlife control.

(f) In the crop year in which a notice of loss is filed, producers may be required, at the discretion of CCC, to provide evidence the floriculture is produced in accordance with paragraph (e) of this section.

(g) Flowers having any dollar value shall be counted as having full value for loss calculations. Damaged plants that are determined able to rejuvenate or determined to be merely stunted shall be counted as worth full value.

§ 1437.305 Ornamental nursery.

(a) Eligible ornamental nursery stock is a value loss crop and is compensable only in accord with restrictions set out in this section. Eligible ornamental nursery stock is limited to field-grown and containerized decorative plants grown in a controlled environment for commercial sale.

(b) The property upon which the nursery stock is located must be owned or leased by the producer.

(c) The eligible nursery stock must be placed in the ornamental nursery facility and not be indigenous to the facility.

(d) The facility must be managed and cared for using good nursery growing practices for the geographical region. At a minimum producers must provide a controlled environment and ensure adequate and proper flood prevention, growing medium, fertilization, irrigation, insect and disease control, weed control, rodent and wildlife control, and over-winterization storage facilities.

(e) An ornamental plant having any value as an ornamental plant, or a damaged ornamental plant that may rejuvenate and re-establish value as a ornamental plant, shall be considered as worth full value based on the age or size of the plant at the time of disaster.

(f) In the crop year in which a notice of loss is filed, producers may be required, at the discretion of CCC, to provide evidence the ornamental nursery is maintained in accordance with this section.

§ 1437.306 Christmas tree crops.

(a) A Christmas tree is a value loss crop and may generate a claim for benefits under this part only if the tree was grown exclusively for commercial use as a Christmas tree, and only if other requirements of this section are met.

(b) The unit of measure for all Christmas tree crops is a plant.

(c) A Christmas tree having any value as a Christmas tree, or a damaged Christmas tree that may rejuvenate and re-establish value as a Christmas tree, shall be considered as worth full value based on the age of the tree at the time of disaster.

§ 1437.307 Mushrooms.

(a) Eligible mushrooms is a value loss crop and is only compensable in accord with the restrictions of this section. To be eligible, the mushrooms must be grown as a commercial crop in a facility with a controlled environment utilizing good mushroom growing practices. The facility must be located on private property either owned or leased by the producer.

(b) The controlled environment for eligible mushrooms must include primary and backup systems for:

(1) Temperature and humidity controls;

(2) Proper and adequate lighting; and

(3) Positive air pressurization and filtration.

(c) The growing medium must consist of a substrate (a habitat and nutrient base) sterilized by heat treatment.

(d) Good mushroom growing practices must be used, and they consist of proper and adequate insect and disease control and the maintenance of a sterile environment. Maintaining a sterile environment includes at a minimum:

(1) Adequate hygiene;

(2) Overall cleanliness;

(3) Isolation or minimum contact procedures;

(4) Use of footpaths; and

(5) Availability and frequent utilization of wash-down facilities.

(e) In the crop year in which a notice of loss is filed, producers may be required, at the discretion of CCC, to provide evidence the mushrooms are maintained in accordance with this section.

§ 1437.308 Ginseng.

(a) Ginseng is a value loss crop and is compensable only as allowed in this section. Ginseng is eligible only if:

(1) The ginseng includes stratified seeds for use as propagation stock in a commercial ginseng operation or rootlet for commercial sale that are grown in a controlled, cultivatable environment on private property either owned or leased by the producer; and

(2) The ginseng is grown using good ginseng growing practices with all plant needs supplied and under control of the producer;

(b) Ginseng will not be eligible to generate benefits under this part if it:

(1) Is indigenous to the facility;

(2) Is grown solely for medicinal purposes; and

(3) Includes wild ginseng rootlet that is harvested and transplanted from woodland grown ginseng.

(c) Good ginseng growing practices must be followed, and include, but are not limited to:

(1) Adequate drainage;

(2) Proper and adequate shade;

(3) Accurate pH level;

(4) Adequate and timely fertilization, including an adequate supply to ensure nutrient reserves to the ginseng plants and customary application equipment;

(5) Adequate pest control, including but not limited to, weed, rodent, and wildlife control; and

(6) Disease control.

(d) Ginseng producers must:

(1) Provide a report of inventory of all ginseng, as determined by CCC;

(2) Provide production and sales records necessary to determine the value of eligible ginseng;

(3) Allow a CCC-certified loss adjustor to verify loss, including physically removing representative samples;

(4) Maintain and provide, as determined by CCC, adequate records of fertilization, and pest and disease controls used or put into place during the crop year; and

(5) Possess a valid food processing licence issued by the applicable State Department of Agriculture or equivalent and subject to food regulations administered by the Food and Drug Administration.

(e) In the crop year in which a notice of loss is filed, producers may be required, at the discretion of CCC, to provide evidence the ginseng was produced in accordance with this section.

§ 1437.309 Turfgrass sod.

(a) Turfgrass sod is a value loss crop and is the upper stratum of soil bound by mature grass and plant roots into a thick mat produced in commercial quantities for sale.

(b) Specific species, types or varieties of grass intended for turfgrass sod will be considered a separate crop without regard to other intended uses.

(c) The unit of measure for all turfgrass sod shall be a square yard.

(d) Turfgrass sod having any value shall be considered as worth full value.

(e) In addition to the records required in § 1437.7, producers seeking payment must provide information to CCC regarding the average number of square yards per acre and all unharvested areas.

§§ 1437.310–1437.400 [Reserved]

Subpart E—Determining Coverage of Forage Intended for Animal Consumption

§ 1437.401 Forage.

(a) Forage eligible to generate benefits under this part is limited to vegetation produced for animal consumption in a commercial operation using acceptable farming, pasture and range management practices for the location necessary to sustain sufficient quality and quantity of the vegetation so as to be suitable for grazing livestock or mechanical harvest. Forage to be mechanically harvested shall be treated under the rules for low-yield crops as calculated under § 1437.103. Claims on forage for grazing benefits will, contrariwise, be determined under this subpart. However, the provisions in this subpart shall govern for all claims including forage for mechanical harvest.

(b) Producers of forage must, in addition to the records required in § 1437.7, specify the intended method of harvest of all acreage intended as forage for livestock consumption as either mechanically or grazed.

(c) Producers must, in the administrative FSA office for the unit, request an appraisal prior to the onset of grazing of any intended mechanically harvested forage acreage that will be both mechanically harvested and grazed.

(d) Forage acreage reported to FSA as intended to be mechanically harvested which is subsequently completely grazed will be considered for crop definition purposes as mechanically harvested. Expected production of the specific acreage will be calculated on the basis of carrying capacity.

(e) Small grain forage is the specific acreage of wheat, barley, oats, triticale, or rye intended for use as forage. Small grain forage shall be considered separate crops and distinct from any other forage commodities and other intended uses of the small grain commodity. In addition to the records required in § 1437.7 producers must specify whether the intended forage crop is intended for fall/winter, spring, or total season forage. In addition to other eligibility requirements, CCC will consider other factors, such as, water sources and available fencing, and adequate fertilization to determine small grain forage eligibility, yields, and production.

(f) CCC will establish forage losses of acreage intended to be grazed on the basis of:

(1) For improved pasture, as determined by CCC, a similar percentage of loss of mechanically harvested forage acreage on the farm, or similar farms in the area; or

(2) For native pasture, as determined by CCC, the percentage of loss as determined by two independent assessments of pasture conditions.

§ 1437.402 Carrying capacity.

(a) CCC will establish a carrying capacity for all grazed forage present in the county for purposes of

administering this program and to that end:

(1) Multiple carrying capacities may be determined for a specific vegetation if factors, such as soil type, elevation, and topography, result in a significant difference of carrying capacity within the county.

(2) CCC may establish separate carrying capacities for irrigated and non-irrigated forage acreage when acreage of traditionally irrigated forage (forage actually irrigated 3 of the last 5 crop years) is present in the county.

(b) Producers may provide evidence that unit forage management and maintenance practices are improvements over those practices generally associated with the established carrying capacity. Based on this evidence, CCC may adjust the expected AUD for the specific forage acreage upward for the crop year NAP assistance is requested by:

(1) Three percent when at least 1 practice was completed at least 1 time in the previous 5 crop years and such practice can be expected to have a positive impact on the forage's carrying capacity in the crop year NAP assistance is requested;

(2) Five percent when 2 or more practices were completed at least 1 time in the previous 5 crop years and such practices can be expected to have a positive impact on the forage's carrying capacity in the crop year NAP assistance is requested; and

(3) Greater than 5 percent when producers provide acceptable records, as determined by CCC, of higher forage production or an increase in animal units supported on the specific forage acreage in 3 of the 5 crop years immediately before the crop year NAP assistance is requested.

§ 1437.403 Determining payments.

Subject to payment limits, availability of funds, and other limits as may apply, payments for losses of forage reported to FSA as intended to be grazed will be determined by:

(a) Multiplying the eligible acreage by the producer's share;

(b) Dividing the result from paragraph (a) of this section by the carrying capacity or adjusted per day carrying capacity established for the specific acreage, as determined by CCC;

(c) Multiplying the result from paragraph (b) of this section by the number of days established as the grazing period;

(d) Adding adjustments of AUD for practices and production to the product of paragraph (c) of this section;

(e) Multiplying the result from paragraph (d) of this section by the applicable percentage of loss established by CCC;

(f) Multiplying the amount of AUD lost to other causes, as determined by CCC, by the producer's share;

(g) Subtracting the result from paragraph (f) of this section from the result from paragraph (e) of this section;

(h) Multiplying the result from paragraph (d) of this section by 0.50;

(i) Subtracting the result from paragraph (h) of this section from the result from paragraph (g) of this section; and

(j) Multiplying the result from paragraph (i) of this section by the AUD value established in accordance with § 1437.11, and then by 55 percent.

§ 1437.404 Information collection requirements under the Paperwork Reduction Act; OMB control number.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for the regulation in this part is 0560–0175.

Signed at Washington, DC, on March 8, 2002.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–6212 Filed 3–18–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1951

RIN 0560–AF78

Farm Loan Programs Account Servicing Policies—Servicing Shared Appreciation Agreements

AGENCY: Farm Service Agency, USDA.

ACTION: Correcting amendment.

SUMMARY: On August 18, 2000, the Farm Service Agency (FSA) published a final rule at 65 FR 50401–50405, which reduced the term of future Shared Appreciation Agreements (SAA), lowered the interest rate on amortized SAA recapture, and deducted the value of certain capital improvements from the shared appreciation recapture calculation. This document contains a correction to the final rule.

DATES: Effective March 19, 2002.

FOR FURTHER INFORMATION CONTACT: Michael Cumpton, telephone (202) 690–4014; electronic mail: *mike__cumpton@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: FSA published a final rule in the **Federal Register** on August 18, 2000, (65 FR 50401–50405) amending 7 CFR part 1951. The final rule revised 7 CFR 1951.914 to reduce the term of all future SAAs from 10 years to 5 years. However, a conforming revision to Exhibit A, Attachment 1 was omitted inadvertently. This document corrects the inconsistency between 7 CFR 1951.914 and Exhibit A, Attachment 1. In addition, the authority citation is being revised to add a reference previously omitted.

List of Subjects in 7 CFR Part 1951

Account servicing, Credit, Debt restructuring, Loan programs-Agriculture, Loan programs-Housing and community development

Accordingly, 7 CFR part 1951 is corrected by making the following correcting amendments:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for part 1951 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932 Note; 7 U.S.C. 1989; 31 U.S.C. 3716; 42 U.S.C. 1480

Subpart S—Farm Loan Programs Account Servicing Policies

2. Revise Exhibit A, Attachment 1, Section II, paragraph entitled ''Conditions of the New Agreement if You Qualify'' to read as follows:

Exhibit A—Notice of the Availability of Loan Servicing and Debt Settlement Programs for Delinquent Farm Borrowers

* * * * *

Conditions of the New Agreement if You Qualify

You must sign a shared appreciation agreement for 5 years. Under the terms of the agreement:

(1) You must repay a part of the sum written down.

(2) The amount you must repay depends on how much your real estate collateral increases in value.

During the 5 years, FSA will ask you to repay part of the debt written down if you do one of the following:

(1) Sell or convey the real estate;

(2) Stop farming; or

(3) Pay off the entire debt

If you do not do one of these things during the 5 years, FSA will ask you to repay part

of the debt written down at the end of the 5 year period.

FSA can only ask you to repay if the value of your real estate collateral goes up.

If either 1, 2, or 3 above occurs in the first four years of the agreement, FSA will ask you to pay 75 percent of the increase in value of the real estate. In the last year, you will be asked to pay only 50 percent of the increase in value. FSA will not ask you to pay more than the amount of the debt written down.

* * * * *

Signed in Washington, DC, on March 1, 2002.

J.B. Penn,

Under Secretary for Farm and Foreign Agricultural Services.

[FR Doc. 02–6210 Filed 3–18–02; 8:45 am]

BILLING CODE 3410–05–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 702 and 741

Prompt Corrective Action; Requirements For Insurance

AGENCY: National Credit Union Administration (NCUA)

ACTION: Final rule.

SUMMARY: NCUA is revising its rule concerning financial and statistical reports to require all federally-insured credit unions to file quarterly Financial and Statistical Reports with NCUA. Currently, only federally-insured credit unions with assets over $50 million must file these reports quarterly. All other federally-insured credit unions are required to file these reports semi-annually. The final amendment is a necessary component of NCUA's examination program that will use a risk-focused approach to examinations and extend the examination cycle for credit unions that meet certain criteria. In conjunction with this change, we are making two conforming changes to NCUA's prompt corrective action rule.

DATES: This rule is effective July 1, 2002.

FOR FURTHER INFORMATION CONTACT: Peter Majka, Data Analysis Officer, Office of Examination and Insurance, 1775 Duke Street, Alexandria, VA 22314, or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

On July 26, 2001, the NCUA Board requested comment on a proposed change to § 741.6(a), the provision governing the filing of quarterly Financial and Statistical Reports, also known as call reports or 5300 Reports. 66 FR 40642 (August 3, 2001). In conjunction with this change, the NCUA Board proposed revising its prompt corrective action rule to eliminate the requirement of written notice to NCUA of net worth changes and the option of filing a call report for the first and third quarter for credit unions that file call reports semi-annually. 12 CFR part 702.

NCUA received 65 comments regarding the proposed changes from 34 federal credit unions, 14 federally-insured state chartered credit unions, one non-federally-insured state chartered credit union, one unidentified credit union, one individual, nine credit union leagues, three credit union trade associations, one bank trade association, and one state supervisory authority (SSA).

Summary of Comments

Quarterly Call Reports

Forty-four of the commenters generally supported the revision to § 741.6(a), of which 11 agreed with one or more conditions stipulated. Twenty-one commenters objected to the proposed change. Overall, many of the commenters expressed concern regarding the additional burden quarterly reporting would place on credit unions, especially smaller credit unions. Several commenters provided suggestions for reducing the additional burden.

The 33 commenters that supported the changes without qualification believed the proposal would: (1) Result in an offsetting time savings for credit unions through the Risk Based Examination Scheduling Program; (2) help NCUA and the SSAs to identify emerging problems in a timely manner; and, (3) permit NCUA and the SSAs to concentrate their supervisory resources on those credit unions that represent a risk.

Negative and qualified commenters expressed concern with the additional time and resource burden on credit unions. Thirty of the commenters are particularly concerned with the effect on small credit unions. Seven commenters noted that smaller credit unions have to work harder to compete. They noted that smaller credit unions usually have a limited number of staff members and believe the limited resources of smaller credit unions could be better used to increase assets and services.

Ten commenters generally did not believe it was necessary for credit unions rated a CAMEL Code 1 and 2 to file quarterly call reports. Several of the commenters did not believe a credit union's financial condition would deteriorate in a 3 to 6 months time frame. Two commenters noted that the burden of completing two more call reports was more detrimental than having a yearly examination; one of which believed examiners and auditors were effective in correcting problems and providing guidance. Four of the commenters suggested that CAMEL Code 1 and 2 credit unions and those credit unions with a long-term trend of stability that have been in existence for more than a few years should be required to file call reports on a semi-annual basis. Three commenters who opposed the proposal noted that the proposed rule will result in the additional collection of information for a small percentage of the industry's credit union assets and therefore is not necessary.

The NCUA Board believes the requirement for filing quarterly call reports is a key element in implementing the Risk Based Examination Scheduling and Risk Focused Examination programs. CAMEL Code 1 and 2 credit unions, no matter the asset size, could be eligible for deferral under the Risk Based Examination Program for one examination cycle. Quarterly filing enhances NCUA's ability to allocate its resources effectively and focus its supervisory efforts on risk regardless of a credit union's asset size. NCUA's 2002 operating budget included a reduction of approximately 33 full-time equivalent staff positions. The deferral of examinations for approximately 1,500 federal credit union with assets under $50 million and the implementation of the Risk Based Examination Scheduling Program were contributing factors to the budgeted staff reductions. In addition, quarterly call reports also provide credit unions, the SSAs, and NCUA with the ability to monitor trends and expeditiously address emerging concerns in an ever-changing economic environment. Overall, the NCUA Board believes the benefits and efficiencies derived from the Risk Based Examination Scheduling and Risk Focused Examination programs outweigh the burden of two additional call reports.

Several commenters believe the proposal places a burden on state-chartered credit unions without providing a corresponding benefit. They noted that the state regulator sets their exam cycle and that this rule may have no effect on their examination cycle or their supervisory fees. Two additional commenters stated that the additional call reports would put a strain on the SSAs' supervisory resources. They urge NCUA to be sensitive to the SSAs' budgetary restraints and work with the

SSAs to implement quarterly reporting in a manner compatible with their budgetary processes.

Many SSAs are reviewing the possibility of including NCUA's Risk Based Examination Scheduling and Risk Focused Examination programs in their supervisory programs. The NCUA Board believes a key benefit of the Risk Based Examination Scheduling Program is the ability to delay examinations for one examination cycle for the well-run, financially strong credit unions. The program, if adopted by the SSAs, should assist the SSAs in focusing their supervisory resources on areas of risk regardless of the credit unions' asset size.

In addition, as manager of the NCUSIF, NCUA needs quarterly financial information from all federally-insured credit unions in order to assess risk to the NCUSIF on a timely and ongoing basis.

Currently, seven state regulators require quarterly call reports and some state regulators have NCUA process their credit unions' call reports. Each SSA could contact their respective Regional Director for assistance, if needed, in gathering and uploading the call reports. NCUA will continue to remain sensitive to the SSA's budgetary restraints. As noted previously, the NCUA Board, primarily through its adoption of the Risk Based Examination Scheduling Program, has been able to reduce its staffing needs by approximately 33 full-time equivalent positions.

One commenter did not believe that the benefit the Central Liquidity Facility (CLF) would receive from more frequent reporting justifies the implementation of quarterly call reports due to the CLF's loan volume. The NCUA Board noted in the proposal that the CLF would have the most recent financial information to help evaluate a credit union's CLF loan request. The NCUA Board did not consider this a primary reason for proposing quarterly call reports. The Board recognizes that the CLF's loan volume is low. However, the CLF's main purpose is to provide emergency liquidity to the credit union system as quickly as possible when other traditional liquidity sources are unavailable. The Board believes quarterly call reports will expedite the loan evaluation process. The ability to quickly provide liquidity under emergency circumstances benefits all credit unions.

Twenty-five commenters suggested NCUA develop a shorter version of the call report for credit unions. Most of the commenters recommended that credit unions with various asset thresholds ranging from under $500,000 to $50 million be permitted to file a short version of the call report. Two commenters in support of an abbreviated form for smaller credit unions suggested that, if a more complex version is needed during the 5300 process, NCUA could e-mail or FAX a copy to the credit unions. Seven commenters suggested requiring an abbreviated version of the 5300 for the first and third quarters.

Four commenters opposed the development of a short version of the call report. One or more of these commenters stated: (1) A short version would not provide timely and complete information for identifying emerging trends; (2) a short version is unnecessary; and (3) only one format should exist in order to avoid confusion and the need for NCUA to provide follow-up for additional information.

Several years ago, NCUA redesigned the call report with small credit unions in mind. NCUA developed a core call report, with supporting schedules that provided more detail if required. The NCUA Board remains sensitive to this issue. Upon further review and the comments received, the NCUA Board has decided to develop a short form 5300 that does not compromise NCUA's and the SSAs' ability to provide adequate supervision. Credit unions with assets of less than $10 million will be required to file the complete version of the Form 5300 for the second and the fourth quarters of the year and may file either the short version or the long version of the 5300 for the first and third quarters of the year.

Five commenters emphasized the need to minimize the frequency of changes to the call report format. One commenter suggested that the call report be color coded to provide guidance to credit unions in preparing those sections of the call report that apply to their operations.

The NCUA Board remains committed to requiring the minimum information needed to provide adequate supervision. The Board believes NCUA has a process that works to assure unnecessary information is not requested on the call report. NCUA's 5300 Working Group, which includes an SSA representative, generally reviews changes to the call report once a year. However, changes may need to be made more frequently due to regulatory changes. Before implementation, any recommended changes go through a review process that considers the burden a change would place on credit unions versus the benefit to be gained.

Several commenters made suggestions regarding the use of technology. One commenter stated that quarterly call reporting would not be a burden to credit unions if their data systems were automated and suggested that NCUA and the credit union industry provide support to unautomated filers such as discounts to purchase personal computers. With this support, NCUA should establish a timetable to discontinue manual remittance of the call report. The NCUA Board does not believe it is necessary to impose upon credit unions a requirement to file electronic versions of the call report. During the June 30, 2001, call report cycle, 9,686 federally-insured credit unions, out of 10,415, filed their call reports using the PC 5300 automated system. Credit unions need to evolve towards understanding the benefits and responsibilities associated with using automated data systems within the scope of their operations. Furthermore, the Board believes it would be more appropriate for another party, such as a credit union trade association, to seek discounts on the purchase of computers for credit unions.

Two commenters suggested that NCUA alleviate the burden of submitting call reports by initiating uploads of call reports to its database. Currently, NCUA offers credit unions the ability to e-mail an electronic version of their completed call report to their examiner or SSA for uploading. NCUA staff plans to develop improved methods for filing call reports as NCUA's technological capabilities improve.

One state-chartered credit union commenter suggested the burden for credit unions could be reduced by automating the Reserve Sheet into a schedule versus a separate remittance sheet. The Reserve Sheet is a supplemental schedule required by the credit union's SSA. This suggestion should be provided to the credit union's state examiner for consideration.

One commenter questioned to what extent NCUA's AIRES (Automated Integrated Regulatory Examination System) Program duplicates the call report program. The commenter suggested that an AIRES download be created each quarter and the call report be used simply to fill in information not available through AIRES. The NCUA Board does not believe this is a viable alternative. AIRES only has the capacity to download certain financial information from a credit union's data system. Any download performed would require an examiner to go on-site or receive a diskette that requires an additional download into the call report system. Effective September 1, 2002, an examiner will be able to download the

most recent call report information into AIRES for an examination. This will help reduce the amount of time needed for an examiner to be on-site.

One commenter made two suggestions to mitigate the potential financial impact on small credit unions. The first recommendation is that NCUA should work with data processors to develop a standard report format consistent with available software. The NCUA Board believes the credit union industry needs to address this matter with its vendors. NCUA can provide the specifications to the vendors upon their request and has done so in the past.

The second recommendation is that NCUA delay the March 2002 quarterly reporting implementation date until the data processing standard report format previously discussed is complete. NCUA is in the process of developing a shortened version of the 5300 for use during the first and third quarters of the year for credit unions with assets of less than $10 million. This short form will not be available until the September 2002 reporting cycle, so the NCUA Board is delaying the effective date of the final rule to July 1, 2002.

One commenter suggested that NCUA develop an electronic worksheet to reduce the preparation time. The Board does not believe a worksheet would assist credit unions in preparing the call report. The call report is in an electronic format. The current call report format includes detailed summary schedules regarding various general operational matters for all credit unions. The Board believes credit unions would be best served by requesting their data processing vendors to develop any detailed summary reports of the information they need to complete the call report.

Five commenters made suggestions regarding a phase-in process for NCUA's implementation of the proposal to help alleviate the burden on credit unions not currently required to file quarterly call reports. Two suggested that quarterly reporting should be phased in over two or three years; one of which suggested that NCUA initially consider only those credit unions for the Risk Based Examination Scheduling Program that are currently required to file quarterly call reports. One suggested that credit unions under $50 million in assets have the option of filing on a quarterly basis. In both cases, those credit unions filing on a quarterly basis would be considered for an extended examination cycle. One commenter suggested that the implementation of quarterly reporting should be delayed to allow sufficient time to adjust staff and operations.

Although the Board is delaying effective date of the regulation, the Board does not believe the extensive delays suggested by the commenters are viable options. The suggestions would delay a smooth transition towards the risk-focused approach to supervising credit unions. In addition, the savings currently reflected in NCUA's 2002 operating budget may not be fully realized if the suggestions were adopted.

Three commenters suggested excluding credit unions with assets of $10 million or less from quarterly reporting for five years. After five years, smaller credit unions should have access to electronic record keeping and should be better able to handle the additional record keeping requirements.

The NCUA Board does not agree with these suggestions. The Board notes that a credit union must file a quarterly call report to qualify for a deferred examination under the Risk Based Examination Scheduling Program. Any qualifying credit union would be excluded from receiving the benefit of a delayed examination. Reducing the number of credit unions qualifying for the program would impact the staff reductions projected in NCUA's approved 2002 budget. In addition, quarterly call reports are intended to reveal emerging problems through quarterly trend analysis so any noted concerns can be addressed in an expeditious manner. This applies to all credit unions no matter what their asset size, capital position, or CAMEL Code. As previously explained, in an effort to ease the burden, the NCUA Board will have staff develop a short form 5300 for credit unions with assets of less than $10 million that does not compromise NCUA's and the SSAs ability to provide adequate supervision for use during the first and third quarters of the year.

Two commenters believed that, instead of quarterly reporting, the burden of collecting any needed additional information should be shifted to the regulator. One suggested that more on-site contacts be scheduled; the other suggested that the regulators receive monthly financial statements.

The NCUA Board does not believe these are viable alternatives. These suggestions diminish the economies that will result from implementing the Risk Based Examination Scheduling Program. In all likelihood, NCUA's current projected reduction in staffing levels may not be fully realized if these suggestions were adopted.

Four commenters conditioned their support of the proposal on the implementation of the Risk Based Examination Scheduling Program. Another commenter, who agreed with the proposal, voiced the concern that, once quarterly call reporting was implemented, the Risk Based Examination Scheduling Program may stop and the credit unions would still have to file quarterly call reports. The NCUA Board has adopted the program through the approval of the 2002 NCUA budget. However, quarterly call reporting has benefits other than the potential deferral of examinations over one examination cycle. Quarterly reporting provides both the credit unions and the regulators the ability to timely detect emerging concerns in an ever-changing economic environment. NCUA, in cooperation with the SSAs, reviews call report requirements at least annually and makes adjustments to the reporting requirements after weighing the benefit gained versus the burden that additional reporting places on the credit unions.

Notice of Requirement To Report Under Prompt Corrective Action

Six commenters provided comments regarding the proposed change eliminating the requirement of § 702.101(c) for written notice from a credit union when its net worth decreases. Four of the commenters agreed with the change; two did not agree. The two objecting commenters did so because they objected to the proposed rule as a whole.

The NCUA Board recognizes that the filing of quarterly call reports obviates the need for written notice and it is deleting this requirement from the rule.

Final Change

Based on the comments received, the NCUA Board is modifying the proposed changes to § 741.6(a). The NCUA Board will have staff develop a short form 5300 that may be used by credit unions with assets under $10 million for the first and third quarters of each year. In addition, the NCUA Board will make the final rule's effective date July 1, 2002. This effective date will provide NCUA staff with sufficient time to develop the short version of the 5300 for use during the year 2002's third quarter call report cycle and the first and third quarters' reporting cycles for each year thereafter.

Currently, this section requires all federally-insured credit unions with assets in excess of $50 million to file a quarterly call report with NCUA. All other federally-insured credit unions file semiannually. The final amendment will require all federally-insured credit unions to file quarterly call reports. Credit unions with assets of less than $10 million will be required to file the complete version of the Form 5300 for

the second and the fourth quarters of the year and may file either the short or the complete version of the 5300 for the first and third quarters of the year.

This amendment is a necessary component of NCUA's revised examination program. The revised examination program has two new features. The first is risk-based examination scheduling that will result in an extended examination cycle program for credit unions meeting certain risk criteria. Approximately 1,500 federal credit unions under $50 million will participate in the extended examination cycle program during the 2002 NCUA budget year. Requiring those credit unions to file quarterly call reports is an essential part of their participation. The credit unions' financial condition must be monitored over the examination cycle to identify emerging trends that may impact the safety and soundness of the credit unions' operations.

The second is a risk-focused approach for all examinations. The risk-focused approach will focus the examination process on those operational areas that represent the greatest risk to the credit union. The process includes evaluating the credit union's financial trend information and management's ability to identify and adapt to changing economic, competitive, technological, and other factors.

These two features will permit NCUA to adjust the examination process for a select number of credit unions based on workload demands in relation to available resources and the risk the credit unions represent to the National Credit Union Share Insurance Fund. Both features will result in better use of available resources and reduce the amount of NCUA on-site contact time needed to assess the overall financial health of federally-insured credit unions. Quarterly financial information will provide NCUA the ability to administer these approaches successfully through off-site review of a credit union's financial trends to detect emerging problems.

In conjunction with the change to § 741.6(a), the Board is making a technical correction to § 741.6(b) by deleting the reference to semi-annual reporting and revising the prompt corrective action rule to eliminate the requirement of written notice to NCUA and the option of filing a call report for the first and third quarter for credit unions that file call reports semi-annually. 12 CFR 702.101(c), 702.103(b).

Regulatory Procedures

Paperwork Reduction Act

The NCUA Board has determined that the final rule to require all federally-insured credit unions to file call reports on a quarterly basis is covered under the Paperwork Reduction Act. NCUA submitted a copy of the proposed rule to the Office of Management and Budget (OMB) for its review. The OMB Control Number for the call report is 3133–0004.

The Paperwork Reduction Act of 1995 and OMB regulations require that the public be provided an opportunity to comment on the paperwork requirements, including an agency's estimate of the burden of the paperwork requirements. Although no commenters specifically commented on the paperwork requirements, their comments on the proposed rule indirectly addressed some of the issues.

The NCUA Board estimated in the proposal that it takes a federally-insured credit union six hours on average to complete a call report. The proposal, using the six-hour call report average, estimated the rule would result in an additional 100,272 hours of call report preparation. Sixteen commenters' reported an average of 10 hours to complete a call report. Three of the commenters were credit union trade associations that surveyed their membership. NCUA has determined, based on the comments and its own research that a more accurate average for call report preparation is eight hours. This eight hour average does not take into account the fact that the proposed amendments only apply to credit unions under $50 million. NCUA's research and the comments indicate that the time to prepare a call report decreases with the size of the credit union. In addition, the proposal did not include a short form option for credit unions under $10 million. This will affect 5,864 federally-insured credit unions. Since the final amendments only apply to credit unions under $50 million and a short form is being created for credit unions under $10 million, NCUA concludes that its original net burden estimate may have overestimated the additional hours resulting from the rule change.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612)(RFA) requires, subject to certain exceptions, that NCUA publish an initial regulatory flexibility analysis (IRFA) with a proposed rule and a final regulatory flexibility analysis (FRFA) with a final rule, unless NCUA certifies that the rule will not have a significant economic impact on a substantial number of small credit unions. For purposes of the Regulatory Flexibility Act, and in accordance with NCUA's authority under 5 U.S.C. 601(4), NCUA has determined that small credit unions are those with less than one million dollars in assets. See 12 CFR § 791.8(a) and NCUA's Interpretive Ruling and Policy Statement, No. 87–2. NCUA's final rule will apply to approximately 1,489 small credit unions, out of 10,316 federally-insured credit unions. Of these 1,489 small credit unions, approximately 55 of the federally-insured state chartered credit unions are already required to file quarterly call reports by their respective SSAs.

At the time of issuance of the proposed rule, NCUA could not make such a determination for certification. Therefore, NCUA issued an IRFA pursuant to section 603 of the Regulatory Flexibility Act. After reviewing the comments submitted in response to the proposed rule, NCUA believes it does not have sufficient information to determine whether the final rule would have a significant economic impact on a substantial number of small credit unions. Therefore, pursuant to section 604 of the Regulatory Flexibility Act, NCUA provides the following FRFA.

The FRFA incorporates NCUA's initial findings, as set forth in its IRFA, addresses the comments submitted in response to the IRFA, and describes the steps NCUA plans to take to minimize the impact on small entities. Currently, all federally-insured credit unions, no matter their asset size, are required to file call reports semi-annually. The current call report contains explicit instructions for completing the report. NCUA will continue this practice for the two additional call reports required from credit unions with assets under $50 million. We believe the instructions meet the requirement to provide guidance to small credit unions in complying with this rule, under Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (P.L. 104–121).

1. Statement of Need

The final amendment will provide NCUA and the SSAs with timely and complete financial data to be used in supervising their credit unions as discussed in the Final Change section above. The adoption of the final amendment to § 741.6(a) of the NCUA's regulations will account for all of the economic impact on small credit unions.

2. Statement of Objectives and Legal Basis

The Final Change section above contains this information. The legal basis for the final rule is in the Federal Credit Union Act. 12 U.S.C. 1756 and 1782.

3. Burdens and Cost Upon Small Credit Unions with the Adoption of this Rule

In general, the commenters were concerned with the additional time and resource burden that would be placed on credit unions if the amendment to the rule were adopted. Thirty of the commenters were specifically concerned with the burden that would be placed on small credit unions. Seven of the commenters noted that smaller credit unions have a limited number of staff members. Several commenters provided various opinions as to what credit union asset size they considered as ''small''. The asset sizes noted varied within the range of less than $500,000 to less than $50 million in assets.

As noted previously, the combined credit union surveys calculated eight hours as the average for all credit unions to complete a call report. For credit unions with assets of $10 million or less, the average time was five hours. One credit union league commenter surveyed mostly small credit unions. The league reported six hours as the average time to complete a call report. We could not determine from the comments provided the average hours calculation for credit unions with assets less than one million dollars. However, NCUA calculated three hours as the average for credit unions with assets less than two million dollars based on its own research. The commenters did not provide any specific dollar cost estimates associated with quarterly call reporting.

4. Discussion of Significant Alternatives To Alleviate Burden

In the proposal, NCUA considered the following alternative approaches in reducing the burden on smaller credit unions:

a. Federally-Insured Credit Unions With Assets Less Than $10 Million

NCUA considered revising the regulation to require only federally-insured credit unions with assets greater than $10 million to file quarterly call reports. This alternative was not pursued due to the changes in NCUA's examination program. Although the NCUA Board has not been persuaded to change its original determination, as discussed below, the Board has made some adjustments to the requirements to reduce the burden on these credit unions. The NCUA Board has adopted the new examination program through its approval of NCUA's 2002 Budget. Approximately 950 federal credit unions with assets less than $10 million have been considered in NCUA's 2002 Budget for examination deferral under the Risk Based Examination Scheduling Program. Of these 950 federal credit unions, approximately 120 have assets less than one million dollars. The program permits deferral of an examination for every other examination cycle. The NCUA Board believes quarterly reporting is necessary to monitor the credit union's financial trends during the deferral period. The NCUA Board believes the burden of the additional hours it takes a credit union to prepare two additional call reports is outweighed by the advantages outlined in the Final Change section.

b. 5300 Short Form

NCUA originally considered the alternative of requiring a credit union with assets of less than $10 million to file a short version of the call report during the March and September cycles. The short form would reduce the burden for those credit unions. The NCUA Board was initially concerned that this alternative may result in insufficient trend information when compared to the full semi-annual call report. However, upon further review and the comments received, the NCUA Board will have staff develop a short form 5300 that does not compromise NCUA's and the SSAs' ability to provide adequate supervision for use during the first and third quarters of the year.

5. Proposed Reporting, Record Keeping, and Other Compliance Requirements

The information collection requirements imposed by the final rule are discussed above in the section on the Paperwork Reduction Act.

6. General Requirements

The proposed rule will require all federally-insured credit unions to file quarterly call reports. The call reports are based on financial and other information relevant to a federally-insured credit union's operations. Federally-insured credit unions with assets of $50 million or more are already required to file quarterly reports. A final short version of the call report will be developed for credit unions with assets of $10 million or less. Staff anticipates the short form will be available for September 2002 call report cycle. Credit unions meeting the asset size requirements will be permitted to use the short form during the first and third quarters of each year.

Requiring quarterly call reports is a sound business practice that would provide: (1) A more cost effective supervisory effort when coupled with NCUA's proposed examination approaches; and (2) a quarterly operational monitoring tool for the credit unions.

7. Identification of Duplicative, Overlapping, or Conflicting Federal Rules.

NCUA is unable to identify any federal statutes or rules that duplicate, overlap or conflict with the proposed rule; however, NCUA has identified seven states that already require their state-chartered federally-insured credit unions to file quarterly call reports. Although the final rule duplicates those state's requirements, it does not impose any significant, additional burden on those federally-insured credit unions.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntary complies with the executive order. The final rule will not have substantial direct effect on the states, on the relationship between the national government and states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined the proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act. 5 U.S.C. 551. The Office of Management and Budget has determined that, for purposes of SBREFA, this is not a major rule.

Treasury and General Government Appropriations Act, 1999

NCUA has determined that the final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Agency Regulatory Goal

NCUA's goal is clear, understandable regulations that impose minimal regulatory burdens. The regulatory change is understandable and imposes minimal regulatory burden. NCUA requested comments on whether the proposed rule change was understandable and minimally intrusive if implemented as proposed. No comments were received.

List of Subjects

12 CFR Part 702

Credit unions, Reporting and record keeping requirements.

12 CFR Part 741

Bank deposit insurance, Credit unions.

By the National Credit Union Administration Board on March 13, 2002.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA is amending 12 CFR parts 702 and 741 as follows:

PART 702—PROMPT CORRECTIVE ACTION

1. The authority citation for part 702 continues to read as follows:

Authority: 12 U.S.C. 1766(a), 1790(d).

2. Amend § 702.101 by revising paragraph (c) to read as follows:

§ 702.101 Measures and effective date of net worth classification.

* * * * *

(c) *Notice by credit union of change in net worth category.* (1) When filing a Call Report, a federally-insured credit union need not otherwise notify the NCUA Board of a change in its net worth ratio that places the credit union in a lower net worth category; and

(2) Failure to timely file a Call Report as required under this section in no way alters the effective date of a change in net worth classification under this paragraph (b) of this section, or the affected credit union's corresponding legal obligations under this part.

3. Amend § 702.103 by removing and reserving paragraph (b).

PART 741—REQUIREMENTS FOR INSURANCE

4. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), and 1781–1790; Pub. L. 101–73.

5. Amend § 741.6 by revising paragraph (a) and removing the words ''or semiannually'' from paragraph (b) to read as follows:

§ 741.6 Financial and statistical and other reports.

(a) Each operating insured credit union must file with the NCUA a quarterly Financial and Statistical Report on or before January 22 (as of the previous December 31), April 22 (as of the previous March 31), July 22 (as of the previous June 30), and October 22 (as of the previous September 30) of each year. Insured credit unions with assets of $10 million or greater must file all quarterly reports on Form NCUA 5300. Insured credit unions with assets of less than $10 million must file their first (due April 22) and third (due October 22) quarter reports on Form NCUA 5300SF or Form NCUA 5300 and their second (due July 22) and fourth (due January 22) quarter reports on Form NCUA 5300.

(b) *Consistency with GAAP.* The accounts of financial statements and reports required to be filed quarterly under paragraph (a) of this section must reflect GAAP if the credit union has assets of $10 million or greater, but may reflect regulatory accounting principles other than GAAP if the credit union has total assets of less than $10 million (except that a federally-insured state-chartered credit union may be required by its state credit union supervisor to follow GAAP regardless of asset size).

* * * * *

[FR Doc. 02–6512 Filed 3–18–02; 8:45 am]

BILLING CODE 7535–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–32–AD; Amendment 39–12678; AD 2002–06–02]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Boeing Model 747 series airplanes. This action requires repetitive inspections for cracking of the upper skin of the horizontal stabilizer center section and the rear spar upper chord, and repair, if necessary. This action is necessary to find and fix such cracking, which could lead to reduced structural capability of the horizontal stabilizer center section, and result in loss of controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective April 3, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 3, 2002.

Comments for inclusion in the Rules Docket must be received on or before May 20, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–32–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–32–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tamara Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received a report that a 3.5-inch crack was found in the upper skin of the horizontal stabilizer center section on a Boeing Model 747SR series airplane. The crack ran forward from the rear spar at left buttock line (LBL) 37.8. While the area where the crack was found is subject to inspections per a certain Supplemental Structural Inspection Document (SSID), the airplane on which the crack was found was not an SSID candidate. Such cracking, if not fixed, could lead to reduced structural capability of the horizontal stabilizer center section, which could result in loss of controllability of the airplane.

The subject area on all Model 747 series airplanes is similar to that on the affected Model 747SR series airplane. Therefore, all of these airplanes may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–55A2050, dated February 28, 2002, which describes procedures for repetitive detailed and high frequency eddy current (HFEC) inspections for cracking of the upper skin of the horizontal stabilizer center section and the rear spar upper chord. The procedures include a detailed visual inspection for cracking of the upper horizontal skin and of the vertical and horizontal flanges of the rear spar upper chord, and an HFEC inspection for cracking of the vertical flange of the upper chord where a detailed visual inspection is impeded by stiffeners, brackets, or sealant. The service bulletin specifies to contact Boeing for repair of any crack that is found. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to find and fix cracking of the upper skin of the horizontal stabilizer center section and the rear spar upper chord, which could lead to reduced structural capability of the horizontal stabilizer center section, and result in loss of controllability of the airplane. This AD requires accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between This AD and the Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of repair conditions, this AD requires the repair of those conditions to be accomplished per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle Aircraft Certification Office, to make such findings.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–32–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–06–02 Boeing: Amendment 39–12678. Docket 2002–NM–32–AD.

Applicability: All Model 747 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an

alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix cracking of the upper skin of the horizontal stabilizer center section and the rear spar upper chord, which could lead to reduced structural capability of the horizontal stabilizer center section, and result in loss of controllability of the airplane, accomplish the following:

Repetitive Inspections

(a) Before the accumulation of 24,000 total flight cycles, or within 90 days after the effective date of this AD, whichever occurs later: Do detailed and high frequency eddy current (HFEC) inspections, as applicable, for cracking of the upper skin of the horizontal stabilizer center section and the rear spar upper chord, according to the Work Instructions and Figure 1 of Boeing Alert Service Bulletin 747–55A2050, dated February 28, 2002. (The inspection procedures include a detailed inspection for cracking of the upper horizontal skin and of the vertical and horizontal flanges of the rear spar upper chord, and an HFEC inspection for cracking of the vertical flange of the upper chord where a detailed inspection is impeded by the presence of stiffeners, brackets, or sealant.) After doing the initial inspections, repeat the inspections every 1,000 flight cycles.

Note 2: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Repair

(b) If any cracking is found during any inspection per paragraph (a) of this AD: Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Boeing Alert Service Bulletin 747–55A2050, dated February 28, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on April 3, 2002.

Issued in Renton, Washington, on March 11, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–6329 Filed 3–18–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–356–AD; Amendment 39–12679; AD 2002–06–03]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –700C, and –800 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–600, –700, –700C, and –800 series airplanes. This action requires measurement of clearance between a certain retention bracket for the elevator power control unit (PCU) and a quadrant on the inboard side of the right elevator PCU, inspection for loose fasteners in certain retention bracket assemblies for the left and right elevator PCUs, and corrective action, if necessary. This action is necessary to prevent jamming of the elevator flight controls, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective April 3, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 3, 2002.

Comments for inclusion in the Rules Docket must be received on or before May 20, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–356–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9–anm–iarcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–356–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Fairhurst, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1118; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received reports of loose fasteners in certain retention bracket assemblies for the left and right elevator power control units (PCUs) on certain Boeing Model 737–600, –700, –700C, and –800 series airplanes. Such loose fasteners could separate from the bracket and interfere with adjacent systems, including the elevator flight controls. A loose bracket

could also cause such interference. Also, operators have found inadequate clearance between a particular retention bracket for the elevator PCU and a quadrant on the inboard side of the right elevator PCU. These conditions, if not corrected, could result in jamming of the elevator flight controls, which could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 737–27A1234, dated March 27, 2000, and Revision 1, dated August 10, 2000. Both service bulletins describe procedures for measurement of clearance between a certain retention bracket for the elevator PCU and a quadrant on the inboard side of the right elevator PCU, and rework of the bracket, if necessary. The service bulletins also describe procedures for a visual inspection for loose fasteners in certain retention bracket assemblies for the left and right elevator PCUs, and torquing of the fasteners, if necessary. The visual inspection for loose fasteners consists of inspecting for inadequate thread protrusion, gaps between the fastener heads and brackets, or loose brackets. Revision 1 differs from the original issue of the service bulletin in that the effectivity listing of Revision 1 includes airplanes not listed in the original issue of the service bulletin. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent jamming of the elevator flight controls, which could result in reduced controllability of the airplane. This AD requires accomplishment of the actions specified in the service bulletin described previously.

The FAA acknowledges that many operators have already accomplished the actions required by this AD on their fleets in accordance with the original issue or Revision 1 of Boeing Alert Service Bulletin 737–27A1234, which had a recommended compliance time of 10 days after receipt of the service bulletin. No further action is necessary for those airplanes on which the actions in the referenced service bulletins have been accomplished. However, the FAA finds that issuance of an AD is warranted at this time to ensure that the actions in the service bulletin are accomplished and the identified unsafe condition is addressed on all affected airplanes.

Difference Between This AD and the Service Bulletin

The service bulletin described previously identifies only Boeing Model 737–600, –700, and –800 series airplanes as being affected by the actions therein. However, we find that the effectivity listing of the service bulletin also includes Model 737–700C series airplanes. Therefore, this AD applies to certain Model 737–700C series airplanes in addition to certain Boeing Model 737–600, –700, and –800 series airplanes.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.,* reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–356–AD.'' The postcard will be date-stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–06–03 **Boeing:** Amendment 39–12679. Docket 2001–NM–356–AD.

Applicability: Model 737–600, –700, –700C, and –800 series airplanes; as listed in Boeing Alert Service Bulletin 737–27A1234, Revision 1, dated August 10, 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent jamming of the elevator flight controls, which could result in reduced controllability of the airplane, accomplish the following:

Measurement of Clearance and General Visual Inspection

(a) Within 10 days after the effective date of this AD, do paragraphs (a)(1) and (a)(2) of this AD, according to Boeing Alert Service Bulletin 737–27A1234, dated March 27, 2000, or Revision 1, dated August 10, 2000.

(1) Measure the clearance between a certain retention bracket for the elevator power control unit (PCU) and a quadrant on the inboard side of the right elevator PCU. If clearance is less than 0.10 inch, before further flight, accomplish rework according to the service bulletin.

(2) Perform a one-time general visual inspection for loose fasteners or brackets in certain retention bracket assemblies for the left and right elevator PCUs. If any loose fastener or bracket is found, before further flight, torque affected fasteners, according to the service bulletin.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Alert Service Bulletin 737–27A1234, dated March 27, 2000, or Boeing Alert Service Bulletin 737–27A1234, Revision 1, dated August 10, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on April 3, 2002.

Issued in Renton, Washington, on March 11, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–6328 Filed 3–18–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 2

[Docket No. RM01–7–000; Order No. 624]

Policy on Certificates of Public Convenience and Necessity for Gas Transmission Facilities in the Off-shore Southern Louisiana Area; Final Rule

Issued March 13, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is removing from its regulations the general statement of policy with respect to the issuance of certificates of public convenience and necessity for the construction and operation of pipeline transmission facilities in the Louisiana off-shore area. The Commission announced a new policy with respect to pipeline construction in the off-shore Louisiana area in *ANR Pipeline Company (ANR).*[1] Since the old policy has changed, we are removing it from the regulations.

DATES: This final rule is effective upon the date of issuance.

FOR FURTHER INFORMATION CONTACT: Cecilia Desmond, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–2280.

SUPPLEMENTARY INFORMATION:

Federal Energy Regulatory Commission

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, Linda Breathitt, and Nora Mead Brownell.

[Docket No. RM01–7–000; Order No. 624]

Policy on Certificates of Public Convenience and Necessity for Gas Transmission Facilities in the Off-shore Southern Louisiana Area; Final Rule

Issued March 13, 2002.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is removing 18 CFR § 2.65 from its regulations. Section 2.65 sets out a general policy with respect to the issuance of certificates of public convenience and necessity for the construction and operation of pipeline transmission facilities in the Louisiana off-shore area. The Commission's predecessor agency, the Federal Power Commission (FPC), announced the policy on June 4, 1968, in Order No. 363, to maximize the use of off-shore Louisiana facilities and to ensure that off-shore facilities were properly sized.[1] In *ANR Pipeline Company (ANR),* the Commission confirmed that § 2.65 no longer reflects its policy with respect to pipeline construction in the off-shore Louisiana area.[2] Since the Commission's policy with respect to construction of off-shore facilities has changed, we are removing § 2.65 from the regulations.

II. Discussion

In promulgating § 2.65 in Order No. 363, the FPC noted the increasing importance of off-shore Louisiana as a

[1] 78 FERC ¶61,326 (1997); *reh'g denied* 85 FERC ¶61,056 (1998); *appeal denied* ANR Pipeline Co. v. FERC, 205 F.3d 403 (D.C. Cir. 2000).

[1] Order No. 363,39 FERFC ¶925 (1968).

[2] 78 FERC ¶61,326 (1997); *reh'g denied* 85 FERC ¶61,056 (1998); *appeal denied* ANR Pipeline Co. v. FERC, 205 F.3d 403 (D.C. Cir. 2000).

source of natural gas for the nation and the much higher cost of installing off-shore pipeline facilities compared to on-shore facilities. Taking this into account, the FPC announced a policy under which it would review applications for construction of pipelines in the Louisiana off-shore area in the Gulf of Mexico on both a joint and individual company basis. The FPC intended to promote joint use arrangements and wanted pipeline companies to develop gas exchange procedures to minimize cross-hauls. The FPC believed that this would assure both timely and cost-effective full utilization of large capacity facilities in the Gulf of Mexico and development of the off-shore gas reserves.

Thus, the policy outlined in § 2.65 states that a pipeline applying for a certificate of public convenience and necessity for the construction and operation of off-shore pipeline facilities should include certain information in its application: (1) A detailed description of the applicant's efforts to transport its gas using another pipeline's existing or proposed off-shore facilities (§ 2.65 (a)(1)); (2) a demonstration that it consulted with other pipelines about using the applicant's proposed facilities to transport their gas to onshore facilities (§ 2.65 (a)(2)); (3) that the applicant will install 30-inch or larger diameter pipe or demonstrate the feasibility of a smaller proposed line (§ 2.65 (a)(3)); and (4) a demonstration that its proposed facilities will be used at a minimum annual load factor of 60 percent of the annual capacity available by the end of a 12-month period following construction, or seek a waiver of this requirement (§ 2.65(a)(4)). Section 2.65 also states that the Commission intends to enforce the 60 percent load factor requirement by permitting off-shore pipeline facilities to be included in the applicant's cost-of-service in future rate proceeedings at an average unit cost predicated on load factors of not less that 60 percent (§ 2.65(b)).

Section 2.65 also states that pipelines should file applications for off-shore facilities by September 1 of the year immediately preceding the proposed installation of the facilities. This would allow staff to review all applications, on a joint and individual company basis, at the same time. In 1976, for example, in *High Island Offshore System (HIOS),* the Commission convened public conferences to discuss a possible alternative joint approach to three competitive applications requesting authorization to construct off-shore pipeline facilities.[3] The three competing applicants ultimately amended and unified their applications to propose one system rather than the three originally proposed, as anticipated by § 2.65.

In 1996, a number of interstate pipeline companies, including ANR and Nautilus Pipeline Company (Nautilus), filed applications requesting authorization to construct pipeline facilities in the Gulf of Mexico in response to significant new deepwater gas reserves being developed in several off-shore Louisiana producing regions. ANR argued that § 2.65 of the Commission's regulations required the Commission to consolidate ANR's application for authority to construct pipeline facilities in the Gulf of Mexico with Nautilus' similar application for off-shore facilities and to hold a joint hearing to consider the two applications.[4] Citing changed circumstances since the FPC adopted the policy announced in Order No. 363, the Commission confirmed that its policy with respect to off-shore facilities has changed and denied ANR's request for consolidation.[5]

ANR appealed the Commission's order, arguing that the Commission had violated its own regulation since § 2.65 required the Commission to hold a comparative hearing on its and Nautilus' applications.[6] In denying ANR's appeal, the court stated that, since § 2.65 is a policy statement, not a regulation, it is not binding on the Commission. Noting that an agency may not depart from prior policy without explanation, the court stated that the Commission's explanation in *ANR* adequately explained how changed circumstances justified a new policy. In response to the court's suggestion that the Commission should amend § 2.65 to reflect its new policy,[7] we are issuing this rule.

As explained in *ANR,* since the 1968 issuance of Order No. 363, both off-shore natural gas production and the Commission's regulatory approach to the construction of pipeline infrastructure have undergone significant changes that have affected the Commission's policy with respect to interstate pipeline construction in the Gulf of Mexico. The Gulf of Mexico, considered a few years ago to be a mature producing area, contains significant newly discovered deep water reserves of natural gas. In recent years, the Commission's regulatory approach has been to encourage the operation of market forces and competition wherever possible to determine what pipeline facilities are constructed.

Thus, rather than allocating limited production in the Gulf of Mexico among a limited number of pipelines as set out in Order No. 363 and § 2.65, the Commission now seeks to encourage an interstate pipeline infrastructure capable of transporting natural gas from newly developed production areas in the Gulf of Mexico. This market-oriented approach allows for the most efficient, cost effective, and timely development of new off-shore reserves and transportation facilities.

In *ANR,* the Commission determined that application of the evaluation standards reflected in § 2.65 to decide which project would meet off-shore capacity requirements could needlessly delay construction of the necessary pipeline infrastructure, delay production plans, and retard further exploration and development in the area. Instead, the Commission stated that the market should determine which projects are best suited to serve the area's infrastructure needs.

Since § 2.65 no longer accurately describes the Commission's policy and the Commission no longer wishes to codify in the regulations its policy on constructing infrastructure in the Gulf of Mexico, the Commission is removing § 2.65.

III. Administrative Findings

The Administrative Procedure Act (APA) requires rulemakings to be published in the **Federal Register** and also mandates that an opportunity for comments be provided when an agency promulgates regulations. However, the APA exempts general statements of policy from its notice and comment requirements.[8] Therefore, since § 2.65 is a policy statement rather than a substantive rule, we are removing it from our regulations without a period for public comment.

IV. Effective Date and Congressional Notification

The APA exempts general statements of policy from the requirement that rules become effective only after thirty days' notice.[9] Therefore, this final rule will be effective upon the date of its issuance. The Commission has determined, with the concurrence of the

[3] 55 FPC 2674 (1976)(the three applicants were Texas Offshore Pipeline System, Inc., Amtex Offshore Pipeline Co., and Natural Gas Pipeline Co. of America).

[4] 78 FERC ¶ 61,326 (1997).

[5] *Id.* at 62,407.

[6] ANR Pipeline Co. v. FERC, 205 F.3d 403 (D.C. Cir. 2000).

[7] *Id.* at n. 2.

[8] 5 U.S.C. 553(b).

[9] 5 U.S.C. 553 § (d)(2).

Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that the removal of this policy statement is not a major rule within the meaning of section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.[10] The Commission is submitting this final rule to both houses of Congress and to the Comptroller General.

V. Environmental Analysis

Commission regulations describe the circumstances where preparation of an environmental assessment or an environmental impact statement will be required.[11] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[12] Since removing an outdated policy statement from the regulations falls within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, no environmental assessment or environmental impact statement is necessary.[13]

VI. Regulatory Flexibility Impact Statement

The Regulatory Flexibility Act of 1980 (RFA)[14] generally requires a description and analysis of proposed rules that will, if promulgated, have a significant economic impact on a substantial number of small entities. The Commission is not required to make such analysis if a rule would not have such an effect.[15]

The Commission does not believe that the removal of § 2.65 from its regulations would have such an impact on small entities. The removal would have an impact only on interstate pipelines, which generally do not fall within the RFA's definition of small entity.[16] Accordingly, pursuant to section 605(b) of the RFA, the Commission certifies that the removal of § 2.65 will not have a significant economic impact on a substantial number of small entities.

[10] 5 U.S.C. § 804(2).

[11] Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), *codified at* 18 CFR Part 380.

[12] 18 CFR 380.4.

[13] *See* 18 CFR 380.4(a)(2)(ii).

[14] 5 U.S.C. 601–612.

[15] 5 U.S.C. 605(b).

[16] 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a ''small business concern'' as a business which is independently owned and operated and which is not dominant in its field of operations.

VII. Information Collection Statement

The Office of Management and Budget's (OMB) regulations require that OMB approve certain information collection requirements imposed by agency rules.[17] However, this Final Rule contains no information reporting requirements, and therefore is not subject to OMB approval.

VIII. Document Availability

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page *(http://www.ferc.fed.us)* and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

—CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.

—CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document is available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208–2222 (E-Mail to WebMaster@ferc.fed.us) or the Public Reference at (202) 208–1371 (E-Mail to *public.referenceroom@ferc.fed.us*).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

[17] 5 CFR Part 1320.

List of Subjects in 18 CFR Part 2

Administrative practice and procedure, Electric Power, Natural gas, Pipelines, Reporting and recordkeeping requirements.

By the Commission.

Magalie R. Salas,

Secretary.

For the reasons set forth in the foregoing, the Commission is removing § 2.65 of Part 2, Chapter 1, Title 18, Code of Federal Regulations, as follows.

PART 2—GENERAL POLICY AND INTERPRETATIONS

1. The authority citation for Part 2 continues to read as follows:

Authority: 5 U.S.C. 601; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 792–825y, 2601–2645; 42 U.S.C. 4321–4361, 7101–7352.

2. Remove § 2.65.

§ 2.65 [Removed]

[FR Doc. 02–6555 Filed 3–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Oxytetracycline Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental abbreviated new animal drug application (ANADA) filed by Phoenix Scientific, Inc. The supplemental ANADA provides for the subcutaneous administration of oxytetracycline (OTC) injectable solution in cattle.

DATES: This rule is effective March 19, 2002.

FOR FURTHER INFORMATION CONTACT: Steven D. Vaughn, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7580.

SUPPLEMENTARY INFORMATION: Phoenix Scientific, Inc., 3915 South 48th St. Terrace, P.O. Box 6457, St. Joseph, MO 64506–0457, filed a supplement to approved ANADA 200–123 that provides for the use of MAXIM 200 (oxytetracycline) Injection as treatment for various bacterial diseases in cattle

and swine. The supplemental ANADA provides for the subcutaneous administration of OTC injectable solution in beef cattle, nonlactating dairy cattle, and calves, including preruminating (veal) calves. The supplemental application is approved as of December 28, 2001, and the regulations are amended in 21 CFR 522.1660 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this supplemental application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.1660 [Amended]

2. Section 522.1660 *Oxytetracycline injection* is amended in the second sentence in paragraph (d)(1)(iii) by removing ''Sponsors 000010 and 053389,'' and adding in its place ''Sponsors 000010, 053389, and 059130''.

Dated: February 28, 2002.

Claire M. Lathers,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 02–6492 Filed 3–18–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8981]

RIN 1545–BA40

Disallowance of Deductions and Credits for Failure To File Timely Return; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to temporary regulations.

SUMMARY: This document contains a correction to temporary regulations that were published in the **Federal Register** on Thursday, January 29, 2002 (67 FR 4173) relating to the disallowance of deductions and credits for nonresident alien individuals and foreign corporations that fail to file a timely U.S. income tax return.

DATES: This correction is effective January 29, 2002.

FOR FURTHER INFORMATION CONTACT: Nina E. Chowdhry, (202) 622–3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subject of this correction is under sections 874 and 882 of the Internal Revenue Code.

Need for Correction

As published, the TD 8981 contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of TD 8981, that was the subject of FR Doc. 02–2044, is corrected as follows:

§ 1.874–1T [Corrected]

On page 4175, column 1, § 1.874–1T(b)(3), *Example 1.,* line 28, the language ''paragraph § 1.874–1(a) from claiming any'' is corrected to read ''§ 1.874–1(a) from claiming any''.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel, (Income Tax and Accounting).

[FR Doc. 02–6476 Filed 3–18–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 53, 301, and 602

[TD 8978]

RIN 1545–AY65

Excise Taxes on Excess Benefit Transactions; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations that were published in the **Federal Register** on Wednesday, January 23, 2002 (67 FR 3076) relating to the excise taxes on excess benefit transactions.

DATES: This correction is effective January 23, 2002.

FOR FURTHER INFORMATION CONTACT: Phyllis D. Haney, (202) 622–4290 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under section 4958 of the Internal Revenue Code.

Need for Correction

As published, the final regulations contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8978), that were the subject of FR Doc. 02–985, is corrected as follows:

1. On page 3078, column 1, in the preamble under the paragraph heading ''*Definition of Applicable Tax-Exempt Organization*'', line 6 from the top of the column, the language ''to the efficient administration of the'' is corrected to read ''for the efficient administration of the''.

2. On page 3082, column 3, in the preamble under the paragraph heading ''*Final Regulatory Flexibility Analysis*'', first paragraph, line 13, the language ''REP. 104–506 at 56–7, March 28, 1996)'' is corrected to read ''REP. 506, 104th Congress, 2d SESS. (1996), 53, 56–7)''.

3. On page 3083, column 1, in the preamble under the paragraph heading ''*Final Regulatory Flexibility Analysis*'', first full paragraph, line 1, the language ''The objective for the rebuttable'' is corrected to read ''The objective of the rebuttable''.

§ 53.4958–4 [Corrected]

4. On page 3091, column 3, § 53.4958–4(a)(3)(vii), *Example 1*, line 12, the language ''T (see § 53.4958–3(a)). Under the initial'' is corrected to read ''T (see § 53.4958–3(c)(3)). Under the initial''.

5. On page 3095, column 2, § 53.4958–4(c)(4), *Example 2*, line 10, the language ''D fails to report the bonus on his individual'' is corrected to read ''D fails to report the bonus on D's individual''.

§ 301.7611–1 [Corrected]

6. On page 3099, column 2, in A–19, line 1, the language ''A–19: See § 53.4958–7(b) of this'' is corrected to read ''A–19: See § 53.4958–8(b) of this''.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel, (Income Tax and Accounting).

[FR Doc. 02–6475 Filed 3–18–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA62

Civilian-Health and Medical Program of the Uniformed Services (CHAMPUS); Partial Implementation of Pharmacy Benefits Program; Implementation of National Defense Authorization Act for Fiscal Year 2001

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Interim final rule; administrative corrections.

SUMMARY: On October 23, 2000 (65 FR 63202), the Department of Defense published a final rule concerning the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) TRICARE Dental Program. This document is published to correct an administrative error in those rules for clarity.

EFFECTIVE DATE: This rule is effective April 1, 2001.

FOR FURTHER INFORMATION CONTACT: Tariq Shahid, Medical Benefits and Reimbursement Systems, TRICARE Management Activity, Office of the Assistant Secretary of Defense (Health Affairs), telephone (303) 676–3801.

SUPPLEMENTARY INFORMATION: The final rule had an effective date that began during the Presidential Moratorium on Rules, therefore, the rule was republished on March 1, 2001 (66 FR 12855), exactly as previously published, to change the effective date to April 1, 2001. In the interval between publication and republication of the final rule on TRICARE Dental Program, on February 9, 2001 (66 FR 9651), the Department of Defense also published an interim final rule concerning, among other issues, partial implementation of the Pharmacy Benefits Program and amended 32 CFR part 199 by adding a new section 199.21, Pharmacy Benefits Program to replace the previously reserved section 199.21. On February 15, 2001 (66 FR 10367) and March 26, 2001 (66 FR 16400), DoD published corrections to the interim final rule changing the effective date to April 1, 2001, and making other administrative changes. Unfortunately, republication of the TRICARE Dental Program final rule on March 1, 2001, amending 32 CFR part 199 to remove section 199.21 (thereby intending to remove section 199.21, TRICARE Selected Reserve Dental Program, as stated in the Supplemental Information section of the final rule) resulted in a technical error removing section 199.21, Pharmacy Benefits Program which was added by the Pharmacy Benefits Program interim final rule to become effective April 1, 2001.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

1. The authority citation continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55

2. Section 199.21 is added to read as follows:

§ 199.21 Pharmacy Benefits Program.

(a) *In general.*—(1) *Statutory authority.* 10 U.S.C. 1074g requires that the Department of Defense establish an effective, efficient, integrated Pharmacy Benefits Program for the Military Health System. This law is independent of a number of section of title 10 and other laws that affect the benefits, rules, and procedures of CHAMPUS/TRICARE, resulting in changes to the rules otherwise applicable to TRICARE Prime, Standard, and Extra. Among these changes is an independent set of beneficiary co-payments for prescription drugs.

(2) *Partial implementation during interim period.* Beginning April 1, 2001, 10 U.S.C. 1074g is partially implemented to coincide with the start of the TRICARE Senior Pharmacy Program and substantial cost sharing changes for active duty dependents enrolled in Prime. Some authorities and requirements of Section 1074g, such as the classification of drugs as formulary or non-formulary under a ''uniform formulary of pharmaceutical agents,'' are not yet implemented. In this section, references to ''interim implementation period'' mean the period beginning April 1, 2001.

(b) *Program benefits.* During the interim implementation period, prescription drugs and medicines are available under the otherwise applicable rules and procedures for military treatment facility pharmacies, TRICARE Prime, Standard, and Extra, and the Mail Order Pharmacy Program. There is not during this interim implementation period a ''uniform formulary'' of drugs and medicines available in all of these parts of the system. All cost sharing requirements for prescription drugs and medicines are established in this section for pharmacy services provided throughout the Military Health System.

(c) *Providers of pharmacy services.* There are four categories of providers of pharmacy services: military treatment facilities (MTFs), network retail providers, non-network retail providers, and the mail service pharmacy program. Network retail providers are those non-MTF pharmacies that are a part of the network established for TRICARE Prime under § 199.17. Non-network pharmacies are those non-MTF pharmacies that are not part of such a network.

(d) *Classifications of drugs and medicines.* During the interim implementation period, a distinction is made for purposes of cost sharing between generic drugs and non-generic (or brand name) drugs.

(e) TRICARE Senior Pharmacy Program. Section 711 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398, 114 Stat. 1654) established the TRICARE Senior Pharmacy Program for Medicare eligible beneficiaries effective April 1, 2001. These beneficiaries are required to meet the eligibility criteria as prescribed in § 199.3. The benefit under the TRICARE Senior Pharmacy Program includes the Basic Program pharmacy benefits as found under § 199.4(d) and the pharmacy benefit and cost sharing as found under this part. The TRICARE Senior Pharmacy Program applies to prescription drugs and medicines provided on or after April 1, 2001.

(f) *Cost sharing.* Beneficiary cost sharing requirements for prescription drugs and medicines are based upon the generic/non-generic status and the point

of sale (i.e., MTF, network pharmacy, non-network pharmacy, mail service pharmacy) from which they are acquired. For this purpose, a generic drug is a non-brand name drug. A non-generic drug is a brand name drug. In the case of a brand name drug for which there is no generic equivalent, the non-generic cost share applies.

(1) *Military treatment facilities.* There are no cost sharing requirements for drugs and medicines provided by MTF pharmacies.

(2) *Retail pharmacy network program.* There is a $9.00 co-pay per prescription required under the retail pharmacy network program for up to a 30-day supply of a non-generic drug or medicine, and a $3.00 co-pay for up to a 30-day supply of a generic drug or medicine. There is no annual deductible for drugs and medicines provided under the retail pharmacy network program.

(3) *Mail service pharmacy program.* There is a $9.00 co-pay per prescription required under the mail service pharmacy program for up to a 90-day supply of a non-generic drug or medicine, and a $3.00 co-pay for up to a 90-day supply of a generic drug or medicine. There is no annual deductible for drugs and medicines provided under the mail service pharmacy program.

(4) *Non-network retail pharmacies.* There is a 20 percent or $9.00 (whichever is greater) co-pay per prescription required for up to a 30-day supply of a drug obtained from a non-network pharmacy. A point of service cost-share of 50 percent applies in lieu of the 20 percent copay for TRICARE Prime enrollees who obtain their prescriptions from a non-network retail pharmacy without proper authorization. In addition, these TRICARE Prime enrollees are subject to higher deductibles as provided in § 199.17(m)(1)(i) and (m)(2)(i). For prescription drugs acquired from non-network retail pharmacies, beneficiaries other than Prime enrollees (including TRICARE Senior Pharmacy Program beneficiaries) are subject to the $150.00 per individual or $300.00 maximum per family (or for dependents of sponsors in pay grades below E–5, $50 per individual or $100 per family) annual fiscal year deductible.

(g) *Effect of other health insurance.* The double coverage rules of § 199.8 are applicable to services provided under the Pharmacy Benefits Program. For this purpose, to the extent they provide a prescription drug benefit, Medicare supplemental insurance plans or Medicare HMO plans are double coverage plans and will be the primary payor.

(h) *Procedures.* The Director, TRICARE Management Activity shall establish procedures for the effective operation of the Pharmacy Benefit Program. Such procedures may include restrictions of the quantity of pharmaceuticals to be included under the benefit, encouragement or requirement of the use of generic drugs, implementation of quality assurance and utilization management activities, and other appropriate matters.

Dated: March 13, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison, Department of Defense.

[FR Doc. 02–6542 Filed 3–18–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AJ23

Information Collection Needed in VA's Flight-Training Programs

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: We are amending our educational assistance and educational benefit regulations concerning flight-training courses for which the Department of Veterans Affairs (VA) pays eligible students. In this regard, we are requiring that flight schools offering such flight-training courses maintain records regarding students to whom VA makes payments. This rule is intended to provide information to VA for determining compliance with requirements for VA payments to students for pursuing flight-training courses. Also, when VA, rather than a separate State entity, is the approving agency, this rule is intended to provide information to VA for determining whether to approve a flight-training course.

EFFECTIVE DATE: *Effective date:* This final rule is effective March 19, 2002.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Assistant Director for Policy and Program Development, Education Service, Veterans Benefits Administration, 202–273–7187.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on April 3, 2000 (65 FR 17477), we proposed to amend VA's educational assistance and educational benefit regulations concerning flight-training courses for which VA makes payments. In this regard, we proposed to add 38 CFR 21.4263(h)(3) to provide that flight schools offering approved flight-training courses must maintain records as set out in the text portion of the document. We also proposed to amend VA's educational assistance and educational benefit regulations by making technical changes for purposes of clarification.

Comments were sought during a 60-day period. Only one comment was received and it was highly supportive of the proposed rule. Based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposed rule as a final rule except that we are making non-substantive changes for purposes of clarity and are adding a statement following § 21.4263 to reflect the approval by the Office of Management and Budget (MB) of the collection of information requirements contained in this rule.

Paperwork Reduction Act

OMB has approved under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) the information collection requirements contained in this rule (in 38 CFR 21.4263(h)(3)) and has assigned them OMB control number 2900–0613.

OMB assigns control numbers to collections of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The valid OMB control number assigned to the collection of information requirements in this rule is displayed at the end of the affected section of the regulations.

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule will have a minuscule monetary effect if any, on affected entities. Pursuant to 5 U.S.C. 605(b), this rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate,or by the private sector, of $100 million or more in any given year.

This rule will have no consequential effect on State, local or tribal governments.

Catalog of Federal Domestic Assistance

the Catalog of Federal Domestic Assistance numbers for programs affected by this rule are 64.120 and 64.124. This rule also affects the Montgomery GI Bill—Selected Reserve program, which has no Catalog of Federal Domestic Assistance number.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims Colleges and universities, Conflict of Interests, Defense Department, Education, Employment, Grant programs—education, Grant programs—veterans, health care, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: December 26, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, VA amends 38 CFR part 21 (subparts D and L) as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart D—Administration of Educational Assistance Programs

1. The authority citation for subpart D continues to read as follows:

Authority: 10 U.S.C. 2141 note, ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 34,35, 36, unless otherwise noted.

§ 21.4152 [Amended]

2. In § 21.4152, the introductory text of paragraph (b) is amended by removing ''on VA.'' and adding, in its place, ''on VA'' and pargraph (b)(4) is amended by removing ''§ 21.4209.'' and adding, in its place ''§ § 21.4209 and 21.4263.''

3. Section 21.4263 is amended by:

A. Removing the authority citation at the end of paragraph (h).

B. Adding paragraph (h)(30.

C. Adding the information collection requirements parenthetical at the end of the section.

The additions read as follows:

§ 21.4263. Approval of flight training courses.

* * * * *

(h) *Nonaccredited courses.* * * *

(3) A flight school must keep at a minimum the following records for each eligible veteran, servicemember, or reservist pursuing flight training:

(i) A copy of his or her private pilot certificate;

(ii) Evidence of completion of any prior training that may be a prerequisite for the course;

(iii) A copy of the medical certificate required by paragraph (a)(2) of this section for the courses being pursued and copies of all medical certificates (expired or otherwise) needed to support all periods of prior instruction received at the current school;

(iv) A daily flight log or copy thereof;

(v) A permanent ground school record;

(vi) A progress log;

(vii) An invoice of flight changes for individual flights or flight lessons for training conducted on a flight simulator or advanced flight training device;

(viii) Daily flight sheets identifying records upon which the 85–15 percent ratio may be computed;

(ix) A continuous meter record for each aircraft;

(x) An invoice or flight tickets signed by the student and instructor showing hour meter reading, type of aircraft, and aircraft identification number;

(xi) An accounts receivable ledger;

(xii) Individual instructor records;

(xiii) Engine log books;

(xiv) A record for each student above the private pilot level stating the name of the course in which the student is currently enrolled and indicating whether the student is enrolled under 14 CFR part 61, part 63, part 141, or part 142;

(xv) Records of tuition and accounts which are evidence of tuition charged and received from all students; and

(xvi) If training is provided under 14 CFR part 141, the records required by that part, or if training is provided under 14 CFR part 142, the records required by that part.

(Authority: 38 U.S.C. 3671, 3672, 3676, 3690(c))

* * * * *

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0613)

Subpart L—Educational Assistance for Members of the Selected Reserve

4. The authority citation for subpart L continues to read as follows:

Authority: 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), 512, ch. 36, unless otherwise noted.

§ 21.7807 [Amended]

5. Section 21.7807 is amended by removing ''§ 21.4209'' and adding, in its place, ''§ § 21.4209 and 21.4263''.

[FR Doc. 02–6540 Filed 3–18–02; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[NV 074–CORR; FRL–7159–6]

Designations of Areas for Air Quality Planning Purposes; State of Nevada; Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is clarifying and correcting the tables in the Code of Federal Regulations that identify the Agency's designations and classifications of nonattainment, attainment, and unclassifiable areas for criteria pollutants within the State of Nevada. Specifically, EPA is clarifying the tables for Nevada to indicate the specific geographic areas that comprise the attainment and unclassifiable areas in the State and to reflect changes in the Agency's regulations implementing the prevention of significant deterioration program. EPA is also correcting the table that shows the classification of the Las Vegas Valley nonattainment area for the National Ambient Air Quality Standard for carbon monoxide.

EFFECTIVE DATE: This action is effective on March 19, 2002.

ADDRESSES: Copies of documents relevant to this action are available for public inspection during normal business hours at the Permits Office of the Air Division, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105–3901.

FOR FURTHER INFORMATION CONTACT: David Albright, Permits Office (AIR–3), U.S. Environmental Protection Agency, Region 9, (415) 972–3971 or albright.david@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we'', ''us'', or ''our'' are used, we mean the Environmental Protection Agency (EPA).

This section contains additional information about our final rulemaking, organized as follows:

I. Clarification of the TSP, SO_2, and NO_2 tables.

II. Clarification of the PM_{10} table.

III. Correction of the CO table.
IV. EPA's final action.
V. Effective date of EPA's final action.

I. Clarification of the TSP, SO_2, and NO_2 Tables

EPA's designations of nonattainment, attainment, and unclassifiable areas pursuant to section 107(d) of the Clean Air Act are contained in part 81 of title 40 of the code of federal regulations (40 CFR part 81). Our designations for such areas in the State of Nevada are located in 40 CFR 81.329 and are presented separately for each of the criteria pollutants.[1] All of the applicable tables in 40 CFR 81.329 contain the term ''rest of state'' or ''entire state'' to describe the attainment or unclassifiable areas within Nevada. We are aware that the term ''rest of state'' or ''entire state'' in these tables at 40 CFR 81.329 could be misinterpreted as designating a single attainment or unclassifiable area. However, based on the regulatory history summarized below, dating back to our initial area designations in 1978, the terms ''rest of state'' and ''entire state'' in the applicable section 81.329 tables actually refer to more than 250 individual section 107(d) attainment or unclassifiable areas.

In 1977, pursuant to section 107(d) of the Clean Air Act Amendments of 1977, the State of Nevada submitted their recommendations to EPA for nonattainment, attainment and unclassifiable areas for TSP (total suspended particulate), SO_2 (sulfur dioxide), and NO_2 (nitrogen dioxide) within the State.[2] Dated November 25, 1977, the State's letter containing the recommendations cites hydrographic areas (delineated by the Nevada Division of Water Resources) as the geographic unit for such areas in Nevada, specifically noting that, ''the name and definition of Nevada's water basins are now being utilized as the reference unit for air basins.'' The letter with the State's 1977 submission indicated that there were 253 such air basins in the State. A careful review of the air basins listed in the documentation provided with the 1977 letter indicates that the State had identified 254 such areas. These areas are referred to herein as ''section 107(d) areas.''

In 1978, we designated section 107(d) areas based on the State's recommendations (contained in the November 1977 letter described above) with certain modifications (that are not relevant for the purposes of this action) and codified these areas in 40 CFR part 81.329. See 43 FR 8962, 9012 (March 3, 1978). In our 1978 rule, we noted: ''In some instances, the descriptions of the designated areas submitted by the States were so lengthy as to prohibit their publication in the limited space available in the tables presented below. Exact descriptions of all areas designated are available at the appropriate Regional Offices or the State in question.'' See 43 FR 8962, 8964 (March 3, 1978). Nevada was one of those States which submitted a lengthy description of section 107(d) areas. In the tables published in the **Federal Register** and codified in 40 CFR 81.329, the short-hand notation ''rest of state'' and ''entire state'' were used to refer to attainment and unclassifiable areas in the State of Nevada, in lieu of the lengthy description of 254 hydrographic areas submitted by the State. Thus, our 1978 rule, despite the use of the short-hand notation in the CFR, approved the hydrographic areas as the attainment or unclassifiable areas (for TSP, SO_2, and NO_2) in the State of Nevada.

Since our 1978 rule, we have twice taken action under section 107(d) of the Clean Air Act to increase the number of designated section 107(d) areas in the State of Nevada. In 1980, we approved a division of hydrographic area 101 (Carson Desert) into two section 107(d) areas for TSP: 101 (a smaller area referred to as Carson Desert); and 101A (referred to as Packard Valley). See 45 FR 46807 (July 11, 1980). In 1982, we approved a division of hydrographic area 179 (Steptoe Valley) into three areas for SO_2: central; northern; and southern. See 47 FR 20772 (May 14, 1982). Upon the effective date of our 1982 rule (June 14, 1982), there have been a total of 256 section 107(d) areas in the State of Nevada for SO_2, 255 section 107(d) areas for TSP, and 254 section 107(d) areas for NO_2.

Therefore, in this action, we are clarifying 40 CFR 81.329 to indicate clearly that the term ''rest of state'' or ''entire state'' in the Nevada tables for TSP, SO_2, and NO_2 refers to the hydrographic areas designated by EPA in 1978, revised for TSP in 1980, and then revised for SO_2 in 1982.

II. Clarification of the PM_{10} Table

In 40 CFR 81.329, there are two tables that list the nonattainment, attainment, and unclassifiable areas in the State of Nevada for particulate matter: one relates to TSP and the other relates to PM_{10}. Today's action clarifies the PM_{10} table to reflect the relationship between that table and the TSP area designations table for the purposes of implementing the PSD program.[3]

In 1991, pursuant to the Clean Air Act Amendments of 1990, the State of Nevada submitted their recommendations concerning nonattainment areas for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}) (PM_{10} replaced TSP as the criteria pollutant for particulate matter.) Dated March 15, 1991, the State's letter containing their recommendations did not refer to PM_{10} attainment or unclassifiable areas, instead focussing solely on the identification of nonattainment areas. Later in 1991, based on the State's recommendations, we revised the nonattainment areas under section 107(d) for PM_{10}. See 56 FR 56694 (November 6, 1991). Our 1991 rule did not identify attainment or unclassifiable areas for PM_{10}.

In 1992, we recognized that we had neglected to identify attainment or unclassifiable areas for PM_{10} in our 1991 rule and thus added the designation ''unclassifiable'' for the areas not otherwise designated nonattainment for PM_{10}, using the term ''rest of state.'' See 57 FR 56762 (November 30, 1992). In this context, the use of the term ''rest of state'' in the PM_{10} table in section 81.329 was only identifying the portion of the State that EPA had not designated nonattainment for PM_{10}.

Unfortunately, the use of the term ''rest of state'' in the PM_{10} table could lead members of the public to conclude that there is a single unclassifiable PM_{10} area in the State for the purposes of the prevention of significant deterioration (PSD) program. However, based on the regulatory history described below, for PSD baseline purposes, the term ''rest of state'' in the PM_{10} table for the State of Nevada refers to hydrographic areas, and in this action, we are clarifying the PM_{10} table accordingly to avoid further confusion.

[1] 40 CFR 81.329 does not contain a table for lead. The entire State of Nevada is in attainment with the national ambient air quality standard for lead.

[2] The state also submitted recommendations for carbon monoxide and oxidant (subsequently replaced by ozone). Today's action does not address area designations in Nevada for either of these two pollutants, with the exception of a correction in the classification shown in 40 CFR 81.329 for Las Vegas Valley as a carbon monoxide nonattainment area.

[3] Although EPA indicated that we would delete the TSP designations in 40 CFR part 81 when EPA approves a State's revised PSD program containing the PM_{10} increments, promulgates the PM_{10} increments into a State's SIP where the State chooses not to adopt the increments on their own, or approves a State's request for delegation of PSD responsibility under 40 CFR 52.21(u) (See 58 FR 31622, 31635 (June 3, 1993)), we are not deleting any section 81.329 TSP designations in today's action, because of the significance of the designations to the implementation of the PSD program for PM_{10}. EPA believes this is a reasonable approach given the confusion that has arisen in the State of Nevada regarding implementation of the PSD program for PM_{10}.

In 1980, EPA revised the regulations implementing the PSD program to define ''baseline areas'' in terms of the attainment or unclassifiable areas listed in 40 CFR part 81, i.e., the section 107(d) areas. 45 FR 52676 (August 7, 1980). In 1987, we revised the National Ambient Air Quality Standard (NAAQS) for particulate matter (52 FR 24634), replacing TSP as the indicator for particulate matter with PM_{10}, and in 1993, we revised our PSD regulations to address the revision in the NAAQS for particulate matter from TSP to PM_{10}. Among other changes in our 1993 rule related to PSD, we decided to retain the TSP baseline areas as part of the program for implementing the newly-promulgated PM_{10} increments. See 58 FR 31622, 31630 (June 3, 1993). The TSP baseline areas had been defined as the section 107(d) areas, and in the State of Nevada, as discussed in the previous section, the section 107(d) areas for TSP are comprised of hydrographic areas. Thus, the effect of our 1993 rule was to retain the hydrographic areas as PM_{10} baseline areas for the purposes of implementing the PM_{10} increments in the State of Nevada. Today's action clarifies the PM_{10} table in 40 CFR 81.329 to indicate, in accordance with EPA's 1993 rule, that for PSD baseline area purposes, the term ''rest of state'' refers to the hydrographic areas that had been approved by EPA as TSP baseline areas in the State of Nevada.

III. Correction of CO Table

On October 2, 1997, we published a final rule that found that the Las Vegas Valley carbon monoxide (CO) nonattainment area did not attain the NAAQS for CO by the applicable attainment date. Our final rule reclassified the area from ''moderate'' to ''serious'' nonattainment under section 186(b)(2) of the Act. See 62 FR 51604 (October 2, 1997). However, we inadvertently failed to codify this final action in the CO table for Nevada in 40 CFR 81.329. The CO table in 40 CFR 81.329 currently lists the prior classification (''Moderate > 12.7 ppm'') for Las Vegas Valley Hydrographic Area 212. In this action, we are therefore correcting the CO table so that the classification of Las Vegas Valley Hydrographic Area 212 is correctly identified as ''serious,'' effective November 3, 1997, reflecting our final action published on October 2, 1997 in the **Federal Register**.

IV. EPA's Final Action

In this action, we are clarifying and correcting the tables in 40 CFR 81.329 that identify nonattainment, attainment, and unclassifiable areas designated by EPA under the Clean Air Act within the State of Nevada. Specifically, we are clarifying the TSP, SO_2, and NO_2 tables to identify exactly which geographic areas comprise the attainment or unclassifiable areas in the State of Nevada consistent with our final rules published in the **Federal Register** on March 3, 1978 (43 FR 8962); July 11, 1980 (45 FR 46807); and May 14, 1982 (47 FR 20772). We are also clarifying the PM_{10} table consistent with our final rule related to PSD published in the **Federal Register** on June 3, 1993 (58 FR 31622). Lastly, we are correcting the table showing the classification of the Las Vegas Valley nonattainment area for the NAAQS for CO consistent with our final rule published in the **Federal Register** on October 2, 1997 (62 FR 51604). In so doing, we are not revising any area designations or classifications in the State of Nevada nor are we changing the underlying method used by the State of Nevada in implementing the PSD program in that State. (The State has been implementing the PSD program on the basis of hydrographic areas consistent with our designations of such areas in 1978.) Rather, we are aligning the contents of the tables in 40 CFR 81.329 with the effective results of prior EPA rules that did establish or revise the area designations or classifications.

V. Effective Date of EPA's Final Action

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA is clarifying and correcting the section of the CFR that lists designations and classifications under the Clean Air Act to reflect prior EPA rules rather than promulgating new or revised designations or classifications. These prior rules had been subject to notice and comment. Thus, notice and public procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Also, because the contents of the existing tables of section 107(d) areas in 40 CFR 81.329 have lead to confusion, particularly in the context of implementing the PSD program in Nevada, we are invoking the good cause exception to the 30-day notice requirement of the Administrative Procedure Act and making today's final action immediately effective. See 5 U.S.C. 553(d)(3).

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute (see section V., above), it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction does not contain technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996).

EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of March 19, 2002. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 20, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National Parks, Wilderness areas.

Dated: March 8, 2002.

Wayne Nastri,

Regional Administrator, Region 9.

Part 81, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart C—Section 107 Attainment Status Designations

2. Section 81.329 is amended by:

a. Revising the tables for ''Nevada—TSP'' and ''Nevada—SO_2''.

b. In the table for ''Nevada—Carbon Monoxide'' by revising the entry for Las Vegas Area.

c. Revising the tables for ''Nevada—PM–10'' and ''Nevada—NO_2''.

The revisions read as follows:

§ 81.329 Nevada.

NEVADA—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
(Township Range):				
Las Vegas Valley (212) (15–24S, 56–64E)	X			
Carson Desert (101) (15–24.5N, 25–35E)	X			
Packard Valley (101A) (24.5–28N, 31–34E)				X
Winnemucca Segment (70) (34–38N, 34–41E)	X			
Lower Reese Valley (59) (27–32N, 42–48E)		X		
Gabbs Valley			X	
Fernley Area (76) (19–21N, 23–26E)	X			
Truckee Meadows (87) (17–20N, 18–21E)	X			
Mason Valley (108) (9–16N, 24–26E)	X			
San Emido Desert (22) (27–32N, 22–24E)			[1] X	
Colorado River Valley (213) (22–33S, 63–66E)			[1] X	
Steptoe Valley (179) (10–29N, 61–67E)			[1] X	
Clovers Area (64) (32–39N, 42–46E)		X		
Rest of State [2]				X

[1] EPA designation replaces State designation.

[2] Rest of State refers to hydrographic areas as shown on the State of Nevada Division of Water Resources' map titled Water Resources and Inter-basin Flows (September 1971).

NEVADA—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
(Township Range):				
Steptoe Valley (179)(10–29N, 61-67E):				
Central	X			
Northern (area which is north of Township 21 North and within the drainage basin of the Steptoe Valley)			X	
Southern (area which is south of Township 15 North and within the drainage basin of the Steptoe Valley)			X	

NEVADA—SO_2—Continued

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Rest of State [1]				X

[1] Rest of State refers to hydrographic areas as shown on the State of Nevada Division of Water Resources' map titled Water Resources and Inter-basin Flows (September 1971).

NEVADA—CARBON MONOXIDE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * * * * * *				
Las Vegas Area:				
Clark County (part):				
Las Vegas Valley Hydrographic Area 212		Nonattainment	11/03/97	Serious.
* * * * * * *				

* * * * *

NEVADA-PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
Washoe County:				
Reno planning area Hydrographic area 87	11/15/90	Nonattainment	02/07/01	Serious.
Clark County:				
Las Vegas planning area Hydrographic area 212	11/15/90	Nonattainment	02/08/93	Serious.
Rest of State [1]	11/15/90	Unclassifiable		

[1] For PSD baseline area purposes, ''rest of state'' refers to hydrographic areas as shown on the State of Nevada Division of Water Resources' map titled Water Resources and Inter-basin Flows (September 1971), as revised to include a division of Carson Desert (area 101) into two areas, a smaller area 101 and area 101A.

NEVADA—NO_2

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
Entire State [1]		X

[1] Entire State refers to hydrographic areas as shown on the State of Nevada Division of Water Resources' map titled Water Resources and Inter-basin Flows (September 1971).

[FR Doc. 02–6613 Filed 3–18–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7159–5]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Removal of the direct final notice of deletion amendment.

SUMMARY: On November 28, 2001, EPA published a notice of intent to delete (66 FR 59393) and a direct final notice of deletion (66 FR 59363) for the Compass Industries Landfill Superfund Site from the National Priorities List. The EPA is removing the direct final notice of deletion amendment due to adverse comments that were received during the public comment period and restores the regulatory text that existed prior to the direct final notice of deletion.

EFFECTIVE DATE: This action is effective as of March 19, 2002.

ADDRESSES: Comprehensive information on the Site, as well as the comments that were received during the comment period are available at: Beverly Negri, Community Involvement Coordinator, U.S. EPA Region 6 (6SF-LP), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–8157 or 1–800–533–3508 (*negri.beverly@epa.gov*).

Information Repositories: Repositories have been established to provide detailed information concerning this decision at the following address: U.S. EPA Region 6 Library, 12th Floor, 1445

Ross Avenue, Suite 12D13, Dallas, Texas 75202–2733, (214) 665–6427, Monday through Friday 7:30 a.m. to 4:30 p.m.; Tulsa City-County Library, 400 Civic Center, Tulsa, Oklahoma, 74103, (918) 596–7977, Monday through Friday 9:00 a.m. to 9:00 p.m.; Friday and Saturday 9:00 a.m. to 5:00 p.m.; Sunday, September through mid-May 1:00 p.m. to 5:00 p.m.; Oklahoma Department of Environmental Quality, Contact: Eileen Hroch, 5th floor file room, 707 N. Robinson, P.O. Box 1677, Oklahoma City, Oklahoma, 73101, (405) 702–5100, Monday through Friday 8:30 a.m. to 3:30 p.m.

FOR FURTHER INFORMATION CONTACT: Katrina Coltrain, Remedial Project Manager (RPM), U.S. EPA Region 6 (6SF–LP), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–8143 or 1–800–533–3508 (*coltrain.katrina@epa.gov*).

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: March 1, 2002.

Lawrence E. Starfield,

Acting Deputy Regional Administrator, Region 6.

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

2. Table 1 of appendix B is amended under Oklahoma (''OK'') by adding an entry, in alphabetical order, for ''Compass Industries Landfill (Avery Drive)'' to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/County	Notes(a)
*	* * * * *	*	*
OK	Compass Industries Landfill (Avery Drive)	Tulsa.	
*	* * * * *	*	*

[FR Doc. 02–6485 Filed 3–18–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 447

[CMS–2134–N]

RIN 0938–AL05

Medicaid Program; Modification of the Medicaid Upper Payment Limit for Non-State Government-Owned or Operated Hospitals: Delay of Effective Date

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Delay of effective date of a final rule.

SUMMARY: This document delays the effective date of the final rule entitled ''Modification of the Medicaid Upper Payment Limit for Non-State Government-Owned or Operated Hospitals,'' published in the **Federal Register** on January 18, 2002 (67 FR 2603).

As published, the rule was to be effective March 19, 2002. We are postponing the effective date of the rule to April 15, 2002.

DATES: The effective date of the final rule, Medicaid Program: Modification of the Medicaid Upper Payment Limit for Non-State Government-Owned or Operated Hospitals, which amended 42 CFR part 447 and published in the **Federal Register** on January 18, 2002, at 67 FR 2602 is delayed until April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Marge Lee, (410) 786–4361.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: March 15, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: March 15, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–6713 Filed 3–18–02; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below of BFEs and modified BFEs for each community listed. The proposed

BFEs and proposed modified BFEs were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed BFEs and proposed modified BFEs were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Administrator, Federal Insurance and Mitigation Administration certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Alaska	
Anchorage (Municipality) Anchorage Division, (FEMA Docket No.B–7415)	
Alyeska Creek:	
At Mount Hood Drive	*121
Approximately 970 feet upstream of Olympic Circle Entrance	*335
Maps are available for inspection at 4700 South Bagall Street, Anchorage, Alaska.	
Oklahoma	
City of Yukon, (FEMA Docket No. B–7421)	
North Canandian River, Tributary A:	
Approximately 3000 feet below Jon Elm Place	*1,260
Approximately 500 feet downstream of U.S. Highway 66	*1,285
Just above Landmark Drive	*1,300
Main Stem Turtle Creek:	
Approximately 35000 feet downstream of U.S. Highway 66	*1,271
Just upstream of U.S. Highway 66	*1,286
At confluence of West Branch Turtle Creek and Middle Branch Turtle Creek	*1,293
Middle Branch of Turtle Creek:	
At confluence with Main Stem Turtle Creek	*1,293
Just downstream of Vandament Avenue	*1,310
Approximately 1,500 feet upstream of Vandament Avenue	*1,318
Approximately 3,800 feet upstream of Vandament Avenue	*1,332
East Branch of Turtle Creek:	
At confluence with Main Stem Turtle Creek	*1,277
At confluence of Cornwell Branch	*1,288
Just downstream of Chicago Rock Island and Pacific Railroad	*1,297
Approximately 300 feet upstream of Vandament Avenue	*1,322
West Branch of Turtle Creek:	
At confluence with Main Stem Turtle Creek	*1,293
Just upstream of Yukon Avenue	*1,311
Approximately 1,500 feet upstream of Yukon Avenue	*1,321
Cornwell Branch of East Branch Turtle Creek:	
At confluence with East Branch Turtle Creek	*1,288
At intersection of Yukon Avenue and Czech Hall Road	*1,298
Approximately 270 feet upstream of the intersection of Bass Avenue and Czech Hall Road	*1,319
Holly Branch of Middle Branch Turtle Creek:	
At confluence with Middle Branch Turtle Creek	*1,314
Approximately 1,400 feet upstream of Holly Avenue	*1,338
North Canadian River:	
Approximately 900 feet downstream of Main Street (U.S. Highway 66)	*1,286
Approximately 1,350 feet downstream of Main Street (U.S. Highway 66)	*1,297
North Canadian River, Tributary B, West Branch:	
At confluence with North Canadian River Tributary B	*1,291
Approximately 1150 feet upstream of confluence with North Canadian River Tributary B	*1,302
North Canadian River, Tributary C:	
Approximately 1,100 feet downstream of Main Street (U.S. Highway 66)	*1,286
Approximately 3,200 feet upstream of Main Street (U.S. Highway 66)	*1,309
North Canadian River, Tributary C, West Branch 1:	
At confluence with North Canadian River Tributary C	*1,289
Just downstream of Oil Field Road	*1,322
North Canadian River, Tributary C, West Branch 2:	
At confluence with North Canadian River Tributary C	*1,306
Just downstream of Church Hill Road	*1,332
Maps are available for inspection at 528 West Main Street, Yukon, Oklahoma.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)	Communities affected
Iowa		
FEMA Docket No. (B–7423)		
Iowa River:		
Approximately 10,000 feet upstream of the confluence with Snyder Creek	*636	Johnson County, City of Iowa City, City of Coralville.
Just downstream of U.S. Highway 6	*644	
Approximately 4,000 feet upstream of Coralville Dam	*657	
Ralston Creek:		
Just upstream of the North Branch Ralston Creek Detention Dam	*700	City of Iowa City, Johnson County.
Approximately 500 feet upstream of Scott Boulevard	*731	
South Branch Ralston Creek:		
Just upstream of Scott Boulevard	*723	City of Iowa City, Johnson County.
Approximately 3,700 feet upstream of Scott County Boulevard	*727	
North Branch Snyder Creek:		
Approximately 4,500 feet downstream of U.S. Route 6	*650	City of Iowa City, Johnson County.
Approximately 2,050 feet upstream of Chicago Rock Island and Pacific Railroad.	*668	
Clear Creek:		
At confluence with Iowa River	*654	Johnson County, City of Iowa City, City of Tiffin.
Approximately 4,100 feet upstream of Camp Cardinal Road	*668	
Approximately 5,300 feet downstream of Interstate 80	*672	
Willow Creek:		
At confluence with Iowa River	*642	City of Iowa City, Johnson County.
Approximately 650 feet upstream of U.S. Route 218	*721	
West Branch Snyder Creek:		
At confluence with North Branch Snyder Creek	*662	Johnson County, City of Iowa City.
Approximately 900 feet upstream of the West Spur Railroad	*673	
Middle Branch Willow Creek:		
At confluence with Willow Creek	*677	City of Iowa City.
Approximately 300 feet upstream of Mormon Trek Boulevard	*690	

Addresses

Johnson County and Unincorporated Areas

City of Iowa City, Iowa:

Maps are available for inspection at the County Courthouse, P.O. Box 325, Allison, Iowa.

City of Tiffin, Iowa:

Maps are available for inspection at Tiffin City Hall, 211 Main Street, Tiffin, Iowa.

City of Coralville:

Maps are available for inspection at the Coralville City Hall, 1512 17th Street, Coralville, Iowa.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).	Communities affected
Missouri		
FEMA Docket No. (B–7421)		
Joachim Creek:		
Approximately 3,500 feet downstream of the New State Highway 110 bridge	*474	City of De Soto.
Approximately 550 feet upstream of Highway E	*525	
Joachim Creek:		
Approximately 3,000 feet downstream of the New Highway 110 bridge	*474	Jefferson County (Uninc. Areas).
Approximately 1,700 feet upstream of the County Highway E	*528	

Addresses

City of De Soto

Maps are available for inspection at City Hall, 17 Boyd Street, De Soto, Missouri.

Jefferson County and Unincorporated Areas

Maps are available for inspection at Jefferson County, Building and Zoning Commission, 300 2nd Street, Hillsboro, Missouri.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)	Communities affected
Nebraska		
FEMA Docket No. (B–7420)		
Shell Creek:		
Approximately 800 feet downstream of County Bridge located at the west section-line of the southwest 1/4 of Section 9, T17N, R4E.	*1,331 *1,348	Colfax County (Uninc. Areas), City of Schuyler.
Approximately 2,000 feet downstream of State Highway 30	*1,368	
Approximately 4,600 feet downstream of State Highway 15	*1,445	
At County Bridge on Colfax/Platte County boundary located approximately 300 feet south of middle of west section Line of Section 19.		

Addresses

Colfax County and Unincorporated Areas

Maps are available for inspection at the Community Map Repository, 411 East 11th Street, Schuyler, Nebraska.

City of Schuyler

Maps are available for inspection at 1103 B Street, Schuyler, Nebraska.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)	Communities affected
Oklahoma		
FEMA Docket No. (B–7404)		
Chisholm Creek:		
Approximately 3,900 feet downstream of Danforth Street	*1,052	
Just upstream of Memorial Road	*1,124	
Just downstream of Hefner Road	*1,167	
Chisholm Creek Tributary 3(Pond Creek):		
At confluence with Chisholm Creek	*1,049	
Just upstream of Danforth Road	*1,074	City of Edmond, City of Oklahoma City.

Addresses:

City of Edmond

Maps are available for inspection at 100 East First Street, Edmond, Oklahoma.

City of Oklahoma City

Maps are available for inspection at 420 West Main Street, Oklahoma City, Oklahoma.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)	Communities affected
Utah		
FEMA Docket No. (B–7421)		
Jordan River:		
Approximately 3,100 feet downstream of the Golf Cart Bridge at Camp Williams Military Reservation.	*4,491	
At Cedar Fort Road	*4,493	
Approximately 1,400 feet upstream of Saratoga Road	*4,494	Utah County (Uninc. Areas).
Approximately 3,100 feet downstream of Saratoga Road	*4,493	
Approximately 1,400 feet upstream of Saratoga Road	*4,494	City of Saratoga Springs.
Approximately 3,100 feet downstream of the Golf Cart Bridge at Camp Williams Military Reservation.	*4,491	
Approximately 1,500 feet downstream of Saratoga Road	*4.493	City of Lehi.

Addresses:

Utah County and Unincorporated Areas:

Maps are available for inspection at the County Public Works Building, 2855 South State Street, Provo, Utah.

City of Saratoga Springs:

Maps are available for inspection at City Hall, City Manager's Office, 2015 South Redwood, Lehi, Utah.

City of Lehi:

Maps are available for inspection at the Building and Planning Department, 99 West Main Street, Lehi, Utah.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)	Communities affected
Washington		
FEMA Docket No. (B–7421)		
Wenatchee River:		
At confluence with Chumstick Creek	*1,078	
At confluence with Icicle Creek	*1,111	Chelan County (Uninc. Areas).
Wenatchee River:		
At confluence with Chumstick Creek	*1,079	
At confluence with Icicle Creek	*1,111	City of Leavenworth.

Addresses

Chelan County and Unincorporated Areas

Maps are available for inspection at Community Map Repository, County Planning Department, 411 Washington Street, Wenatchee, Washington.

City of Leavenworth:

Maps are available for inspection at City Hall, Department of Community Development, 700 Highway 2, Leavenworth, Washington.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: March 13, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–6574 Filed 3–18–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 27 and 73

[GN Docket No. 01–74; DA 02–607]

Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59)

AGENCY: Federal Communications Commission.

ACTION: Final rule; deadlines for filing oppositions to petitions for reconsideration and replies to oppositions to petitions for reconsideration.

SUMMARY: This document gives notice of petitions for reconsideration of the Report and Order in GN Docket No. 01–74, FCC 01–364, concerning the reallocation and service rules for the 698–746 MHz spectrum band (Television Channels 52–59), and sets an expedited schedule for filing oppositions to the petitions for reconsideration and replies to such oppositions.

DATES: Oppositions are due on or before March 25, 2002, and replies are due on or before April 1, 2002.

ADDRESSES: Oppositions and replies may be filed by paper or electronically. If filed by paper by hand delivery, documents should be delivered to 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. If filed by overnight delivery service (other than U.S. Postal Service Express and Priority Mail), filings must be received at the Commission's headquarters at 445 12th Street, SW, Washington, DC 20554; those deliveries will then be diverted to the Commission's Capitol Heights facility. Oppositions and replies filed electronically (by email or by facsimile) should be done as set forth in this document. In addition, one copy of each opposition and reply must be delivered to the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, by facsimile (202) 863–2898, or via e-mail at *qualexint@aol.com.*

FOR FURTHER INFORMATION CONTACT: G. William Stafford, Wireless Telecommunications Bureau, at (202) 418–0563, email: *wstaffor@fcc.gov;* Michael Rowan, Wireless Telecommunications Bureau, at (202) 418–1883, email: *mrowan@fcc.gov;* or Jamison Prime, Office of Engineering and Technology, at (202) 418–1883, email: *jprime@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released March 14, 2001. The complete text is available for inspection and copying during normal business hours in the FCC Reference Center (CY–A257), 445 12th Street, SW., Washington, DC. It may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893. It is also available on the Commission's web site at *http://www.fcc.gov.*

1. Notice is hereby given that the parties listed have petitioned the Commission for reconsideration and clarification of the Report and Order in GN Docket No. 01–74, FCC 01–364, 67 FR 5491 (February 6, 2002). In the Report and Order, the Commission adopted allocation and service rules for the 698–746 MHz spectrum band (''Lower 700 MHz Band''), currently comprising television Channels 52–59, in order to reclaim and license this spectrum in accordance with statutory mandate. This spectrum is being reclaimed for new commercial services as part of the transition of television broadcasting from analog to digital transmission systems. The Communications Act of 1934, as amended, requires the Commission to assign spectrum reclaimed from

broadcast television using competitive bidding, and envisions that the Commission will conduct an auction of this spectrum by September 30, 2002.

2. In light of the upcoming auction of licenses in the Lower 700 MHz band at 698–746 MHz (Auction No. 44), which is scheduled to commence on June 19, 2002, good cause exists in this instance to alter the periods specified in § 1.429 of the Commission's rules, 47 CFR 1.429, for the filing of oppositions to petitions for reconsideration and replies to oppositions. The petitions filed by the parties listed seek reconsideration or clarification of a number of the policies and procedures adopted in the Report and Order, which are relevant to the transition of the 698–746 MHz band from broadcasting to new services. An expedited schedule will give the Commission an opportunity to provide timely guidance regarding these issues to prospective bidders and incumbent broadcasters in advance of Auction No. 44. Accordingly, oppositions to petitions for reconsideration of the Report and Order shall be filed no later than March 25, 2002, and replies to oppositions will be due no later than April 1, 2001.

Procedural Matters

4. Parties submitting oppositions or replies should address the issues raised in the petitions for reconsideration in light of the relevant statutory requirements, procedures, and public interest considerations. All responsive filings should reference the docket number of this proceeding, i.e., GN Docket No. 01–74.

5. This proceeding has been designated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. 47 CFR 1.1200(a), 1.1206. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must reflect the substance of the presentations and not merely list the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written ex parte presentations in permit-but-disclose proceedings are set forth in Section 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

6. Parties may obtain copies of the Report and Order and petitions for reconsideration at the FCC website, *http://www.fcc.gov/e-file/ecfs.html.* The petitions are also available for public inspection and copying in the Reference Center, Room CY A257, 445 12th Street, SW., Washington, DC 20554. Copies of the petitions are also available from Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or e-mail at *qualexint@aol.com.*

7. Oppositions to petitions for reconsideration and replies may be filed using the Commission's Electronic Comment Filing System (''ECFS'') or by filing paper copies. Oppositions and replies filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Each filing should be submitted into the following docket: GN Docket No. 01–74. In completing the transmittal screen, parties should include their full name and Postal Service mailing address. Parties may also submit an electronic filing by Internet e-mail. To get filing instructions for e-mail filings, parties should send an e-mail message to *ecfs@fcc.gov,* including ''get form to <your e-mail address>'' in the body of the message. A sample form and directions will be sent in response.

8. Due to the threat of contamination that resulted in the disruption of regular mail, the Commission released on November 29, 2001, an Order, temporarily amending certain procedural rules on an emergency basis. Oppositions to petitions for reconsideration and replies thereto must be filed electronically (i.e., by e-mail or facsimile), or by hand delivery to the Commission's Massachusetts Avenue location.

9. If filed electronically by e-mail, oppositions to petitions for reconsideration and replies thereto shall be filed at the following e-mail address: *WTBSecretary@fcc.gov.* Please also copy (CC) G. William Stafford at *wstafford@fcc.gov,* Michael J. Rowan at *mrowan@fcc.gov*, and Jamison Prime at *jprime@fcc.gov.* For security purposes, we recommend that documents filed via electronic mail be converted to PDF format.

10. If filed by facsimile, oppositions to petitions for reconsideration and replies thereto shall be faxed to 202–418–0187. The fax transmission should include a cover sheet listing contact name, phone number and, if available, an e-mail address. In addition to the official filing, please also fax copies to G. William Stafford, Room 4-A124, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, Michael J. Rowan, Room 4–A131, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, and Jamison Prime, Room 4–A734, Office of Engineering and Technology, at (202) 418–7447.

11. If filed by hand delivery, documents shall be delivered to 236 Massachusetts Avenue, NE, Suite 110, Washington DC 20002. Please address documents to the Secretary, and copies thereof to the attention of G. William Stafford, Room 4-A124, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, Michael J. Rowan, Room 4-A131, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, and Jamison Prime, Room 4-A734, Office of Engineering and Technology.

12. If filed by overnight delivery service (other than U.S. Postal Service Express and Priority Mail), filings must be received at the Commission's headquarters at 445 12th Street, SW., Washington, DC 20554. As noted in the October 17 and October 18, 2001 public notices, the Commission will divert those deliveries to the Capitol Heights facility.

13. In addition, one copy of each opposition to petitions for reconsideration and each reply thereto must be delivered to the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone (202) 863–2893, by facsimile (202) 863–2898, or via e-mail at *qualexint@aol.com.*

14. Listed are the parties filing petitions for reconsideration and clarification of the Report and Order in GN Docket No. 01–74:

Spectrum Clearing Alliance (by Paxson Communications Corporation) (February 5, 2002); Supplement to Petition (March 8, 2002).

KM Communications, Inc. (March 6, 2002).

Office of the Chief Technology Officer, Government of the District of Columbia (March 8, 2002).

Access Spectrum, LLC (March 8, 2002).

Spectrum Exchange Group, LLC and Allen & Company Incorporated (March 8, 2002).

The WB Television Network (March 8, 2002).

Pappas Telecasting of America, a California Limited Partnership, and Iberia Communications, LLC (Joint Petition) (March 8, 2002).

Univision Television Group, Inc. (March 8, 2002).

Federal Communications Commission.

William W. Kunze,

Chief, Wireless Telecommunications Bureau, Commercial Wireless Division.

[FR Doc. 02–6621 Filed 3–18–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 00–248, FCC 02–45]

Satellite License Procedures

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts rule revisions that would enable it to issue satellite and earth station licenses with 15-year license terms, rather than the 10-year license terms permitted under the current rules. These rule revisions are intended to reduce the administrative burdens of satellite licensees and earth station licensees.

DATES: Effective April 18, 2002.

FOR FURTHER INFORMATION CONTACT: Steven Spaeth, Satellite Division, International Bureau, (202) 418–1539.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's First Report and Order adopted February 14, 2002 and released February 28, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Public Reference Room, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 Twelfth Street, SW., Room CY-B402, Washington, DC 20554.

Paperwork Reduction Act

The rule revisions adopted in this First Report and Order have been analyzed with respect to the Paperwork Reduction Act of 1995, Public Law 104–13, and do not contain new and/or modified information collections subject to Office of Management and Budget review.

Regulatory Flexibility Analysis

In this First Report and Order, the Commission extends the license term of all space station and earth station granted after the effective date of these rules from 10 years to 15 years. The effect of these rule revisions is to reduce the number of times space station and earth station licensees will be required to renew their licenses. This will reduce the administrative burdens of space station and earth station licensees. We expect that this change will be minimal and positive. Therefore, we certify that the requirements of this First Report and Order will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the First Report and Order, including a copy of this final certification, in a report to Congress pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A). In addition, the First Report and Order and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**. See 5 U.S.C. 605(b).

Summary of First Report and Order

Currently, Part 25 of the Commission's rules provides for issuing earth station licenses, space station licenses, and receive-only earth station registrations with a maximum of 10-year license terms. In this First Report and Order, the Commission revises Part 25 to allow for earth station licenses, space station licenses, and receive-only earth station registrations with 15-year license terms.

Ordering Clauses

Pursuant to sections 4(i), 7(a), 11, 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 161, 303(c), 303(f), 303(g), 303(r), this First Report and Order is hereby adopted.

Part 25 of the Commission's rules *is amended* as set forth in the Rule Changes.

The rule revisions adopted in this First Report and Order will be effective 30 days after a summary of this Order is published in the **Federal Register**.

The Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of this First Report and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 25

Satellites.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 25 as follows:

PART 25—SATELLITE COMMUNICATIONS

1. The authority citation for Part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies Sections 4, 301, 302, 303, 307, 309, and 332 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309, 332, unless otherwise noted.

2. Section 25.121 is amended by revising paragraphs (a), (b), and (d)(2) to read as follows:

§ 25.121 License term and renewals.

(a) *License term.* Licenses for facilities governed by this part will be issued for a period of 15 years.

(b) The Commission reserves the right to grant or renew station licenses for less than 15 years if, in its judgment, the public interest, convenience and necessity will be served by such action.

* * * * *

(d) * * *

(2) For non-geostationary satellite orbit satellites, the license term will begin at 3 a.m. EST on the date that the licensee certifies to the Commission that its initial space station has been successfully placed into orbit and that the operations of that satellite fully conform to the terms and conditions of the space station system authorization. All space stations launched and brought into service during the 15-year license term shall operate pursuant to the system authorization, and the operating authority for all space stations will terminate upon the expiration of the system license.

* * * * *

3. Section 25.131 is amended by revising paragraph (h) to read as follows:

§ 25.131 Filing requirements for receive-only earth stations.

* * * * *

(h) Registration term: Registrations for receive-only earth stations governed by this section will be issued for a period of 15 years from the date on which the application was filed. Applications for renewals of registrations must be submitted on FCC Form 405 (Application for Renewal of Radio Station License in Specified Services) no earlier than 90 days and no later than 30 days before the expiration date of the registration.

* * * * *

[FR Doc. 02–6524 Filed 3–18–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–490]

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to *Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment,* 4 FCC Rcd 2413 (1989), and the *Amendment of the Commission's Rules to permit FM Channel and Class Modifications [Upgrades] by Applications,* 8 FCC Rcd 4735 (1993).

DATES: Effective March 19, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, adopted February 20, 2002, and released March 1, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC. 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 266C3 and adding Channel 266C0 at Lake Havasu City.

3. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 235C2 and adding Channel 235C3 at Coushatta.

4. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 299A and adding Channel 299C3 at Stockton.

5. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by removing Channel 224C3 and adding Channel 224C2 at Ely and by removing Channel 284A and adding Channel 284C1 at Moapa Valley.

6. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 284A and adding Channel 284C3 at Ponca City.

7. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by removing Channel 229A and adding Channel 229C3 at Atwood.

8. Section 73.202(b), the Table of FM Allotments under Vermont, is amended by removing Channel 269A and adding Channel 269C3 at Stowe.

9. Section 73.202(b), the Table of FM Allotments under Washington, is amended by removing Channel 240C3 and adding Channel 240C2 at Quincy.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 02–6375 Filed 3–18–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 031402A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific cod by Vessels 60 Ft (18.3 m) Length Overall and Using Pot Gear in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher processor vessels using pot gear and catcher vessels 60 ft (18.3 m) length overall (LOA) and longer using pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season apportionment of the 2002 total allowable catch (TAC) of Pacific cod allocated to vessels using pot gear in this area.

DATES: *Dates*: Effective 1200 hrs, Alaska local time (A.l.t.), March 16, 2002, until 1200 hrs, A.l.t., June 10, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season apportionment of the 2002 Pacific cod TAC allocated to vessels using pot gear in the BSAI was established in an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002) as a directed fishing allowance of 10,305 metric tons. See § 679.20 (c)(3)(iii), § 679.20 (c)(7), and § 679.20 (a)(7)(i)(A)&(C).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the A season apportionment of the 2002 Pacific cod TAC allocated to vessels using pot gear as a directed fishing allowance in the BSAI will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher processor vessels using pot gear and catcher vessels 60 ft (18.3 m) LOA and longer using pot gear in the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20 (e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to prevent exceeding the A season apportionment of the 2002 Pacific cod TAC allocated to vessels using pot gear constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the

authority set forth at 5 U.S.C. 553 (b)(3)(B) and 50 CFR 679.20 (b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to prevent exceeding the A season apportionment of the 2002 Pacific cod TAC allocated to vessels using pot gear constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 14, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–6566 Filed 3–14–02; 4:33 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 53
Tuesday, March 19, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1124 and 1135

[Docket No. AO–368–A30, AO–380–A18; DA–01–08]

Milk in the Pacific Northwest and Western Marketing Areas; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; correction.

SUMMARY: The Agricultural Marketing Service is correcting the proposed rule that appeared in the **Federal Register** of March 4, 2002, (67 FR 9622), which gave notice of a public hearing being held to consider proposals that would amend certain pooling and related provisions of the Pacific Northwest and Western Federal milk marketing orders. The document was published with an inadvertent error regarding the date of the public hearing. This docket corrects the error to show the public hearing will begin on April 16, 2002.

DATE: March 4, 2002.

FOR FURTHER INFORMATION CONTACT: Gino Tosi, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2968, 1400 Independence Avenue, SW STOP 0231, Washington, DC 20250–0231, (202) 690–1366, e-mail address: gino.tosi@usda.gov.

SUPPLEMENTARY INFORMATION: In the proposed rule beginning on page 9622 of the **Federal Register** for Monday, March 4, 2002, the hearing date in the second column on page 9622 is corrected in both the **DATES** and **SUPPLEMENTARY INFORMATION** sections to read as follows:

DATES: The hearing will convene at 8:30 a.m. on Tuesday, April 16, 2002.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at the Hilton Hotel, Salt Lake City Airport, 5151 Wiley Post Way, Salt Lake City, UT 84116–2891, (801) 539–1515 (voice), (801) 539–1113 (fax), beginning at 8:30 a.m., on Tuesday, April 16, 2002, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Pacific Northwest and Western marketing areas.

Dated: March 14, 2002.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6657 Filed 3–15–02; 11:53 am]

BILLING CODE 3410–08–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AG86

Incorporation by Reference of ASME BPV and OM Code Cases

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to incorporate by reference certain American Society of Mechanical Engineers (ASME) Code Cases which the NRC has reviewed and found acceptable for use. These code cases provide alternatives to requirements in the ASME Boiler and Pressure Vessel Code (BPV Code) and the ASME Code for Operation and Maintenance of Nuclear Power Plants (OM Code) pertaining to inservice inspection and inservice testing, operation and maintenance, and design, construction and materials. This action would incorporate by reference the current versions of NRC-developed Regulatory Guides which address NRC review and approval of ASME-published code cases. In connection with this action, the NRC published a notice of the issuance and availability of the current versions of the three proposed regulatory guides addressing NRC approval of ASME BPV Code Cases and the OM Code Cases (66 FR 67335; December 28, 2001) for public comment. As a result of these related actions, NRC-approved code cases would be accorded the same legal status as the corresponding requirements in the ASME BPV Code and OM Code which are already incorporated by reference in the NRC's regulations.

DATES: Submit comments by June 3, 2002. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only of comments received on or before this date.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. ATTN: Rulemakings and Adjudications Staff.

Comments may be hand delivered to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Copies of the public comments received on this proposed rule will be available for public inspection or copying in the NRC Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland, Room O–1 F21.

Public comments may be provided via the NRC's interactive rulemaking website at *http://ruleform.llnl.gov.* Through use of this site, the public may upload comments as files (in any format), provided that the web browser used supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher at (301) 415–5905, e-mail *cag@nrc.gov.*

The NRC maintains an Agencywide Documents Access Management System (ADAMS) which provides text and image files of NRC's public documents. Publicly available documents pertaining to this rulemaking may be accessed through the NRC's Public Electronic Reading Room (PERR) on the Internet at *http:www.nrc.gov/reading-rm/adams.html.* If ADAMS access is not available or difficulty is encountered in its use, contact the NRC PDR Reference staff at 1–800–397–4209, (301) 415–4737, or through the PDR's e-mail address at *pdr@nrc.gov.* Further information about obtaining documents relevant to this rulemaking, including a list of ADAMS accession numbers, can be found in the ''Availability of Documents'' Section below, under the **SUPPLEMENTARY INFORMATION** heading.

FOR FURTHER INFORMATION CONTACT: Harry S. Tovmassian, Office of Nuclear

Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–3092, e-mail *hst@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background

New editions of the ASME BPV and OM Codes are issued every three years and addenda to the editions are issued annually. It has been the Commission's policy to update 10 CFR 50.55a to incorporate the ASME Code editions and addenda by reference. Section 50.55a was last amended on September 22, 1999 (64 FR 51370), to incorporate by reference the 1995 edition of these codes, up to and including the 1996 addenda. The ASME also publishes code cases for Section III and Section XI quarterly, and code cases for the OM Code yearly. Code cases are generally alternatives to the requirements of the ASME BPV Code and the OM Code. It has been the NRC staff's practice to review these code cases and find them either acceptable, conditionally acceptable, or unacceptable for use by NRC licensees. These code cases are then listed in periodically revised regulatory guides (RGs), together with information on their acceptability. Footnote 6 to 10 CFR 50.55a refers to the RGs listing code cases determined by the staff to be ''suitable for use.'' The publication dates and version numbers of the RGs are not specified in Footnote 6. In the past, these RGs have not been approved by the Director of the Office of the Federal Register (OFR) for incorporation by reference in the Code of Federal Regulations.

Discussion

The NRC has identified a concern with the practice of generally referencing the RGs addressing ASME Code Cases in Footnote 6 to 10 CFR 50.55a. The notice and comment provisions of the Administrative Procedure Act (APA) (5 U.S.C. 551, *et seq.*), as amended, arguably are not satisfied by this practice. To address this matter, the NRC is proposing that the use of ASME Code Cases be approved through a rulemaking incorporating the applicable RGs by reference into Title 10 of the Code of Federal Regulations.

Over the past several years, NRC licensees have expressed concern that the NRC process for reviewing and approving code cases is protracted and, therefore, they have borne the additional burden of submitting relief requests to use code cases not yet approved. To improve the efficiency of the process for endorsement of ASME Code Cases, the NRC plans to proceed as follows for future updates. First, the NRC will review code cases and revise the RGs periodically to indicate code cases approved for use by NRC licensees. This is simply a continuation of past practice. The NRC will issue the draft RGs for comment prior to issuance of the final RGs. At approximately the time each set of final guides are issued, the NRC intends to also issue the next set of proposed guides so that the time lapse between code case publication and NRC incorporation by reference may be diminished. Second, the NRC will conduct rulemakings to incorporate the revised RGs by reference into 10 CFR 50.55a. The NRC will complete each rulemaking within a short time of the issuance of the applicable final RGs. Where these rulemakings do not involve significant questions of policy, they will be authorized in accordance with the rulemaking authority delegated to the NRC's Executive Director for Operations under NRC Management Directives 6.3 and 9.17. To expedite the issuance of subsequent rules, the NRC will conduct such rulemakings without preparing a rulemaking plan. The need to conduct these rulemakings will be determined strictly by the schedule for revision of the associated RGs. These actions should expedite the NRC process for reviewing and approving ASME Code Cases.

Paragraph-By-Paragraph Discussion

The proposed rule would add a new paragraph (i) to 10 CFR 50.55a that identifies the RGs (including their revision numbers) to be incorporated by reference into Title 10 of the Code of Federal Regulations. In addition, the text of the existing Footnote 6 to § 50.55a would be deleted and references to Footnote 6 in 10 CFR 50.55a would be revised to state that optional ASME Code Cases are incorporated by reference in paragraph (i). In the proposed rule, the NRC has added the new language governing incorporation by reference of ASME Code Cases to paragraph (i) of §50.55a. However, the NRC is considering two alternatives for placement of this language: (1) Placing the relevant code case language of approval into paragraph (b) of Section 50.55a; and (2) redesignating paragraph (h), which currently sets forth the endorsement of the IEEE Std. 603–1991 and IEEE Std. 279, as paragraph (i), and placing the code case language of approval in paragraph (h). The NRC requests public comment on these alternatives.

1. Current references to Footnote 6 in §§ 50.55a(c)(3), (d)(2), and (e)(2) would be removed and text would be added indicating that the optional ASME Code Cases referred to are those listed in the RGs that are incorporated by reference in § 50.55a(i).

2. The current references to Footnote 6 contained in §§ 50.55a(f)(2), (f)(3)(iii)(A), (f)(3)(iv)(A), (g)(2), (g)(3)(i), and (g)(3)(ii) would be removed and text would be added indicating that the optional ASME Code Cases referred to are those listed in the RGs that are incorporated by reference in § 50.55a(i). Note that these requirements do not specify that optional ASME Code Cases may be applied; this language would be added.

3. Paragraph (i) would be added to § 50.55(a). This paragraph would contain the language of incorporation by reference and identify each RG by title and revision number and would contain implementation requirements for each RG incorporated by reference.

Footnote 6 to 10 CFR 50.55a states that ASME Code Cases suitable for use are listed in RGs 1.84, 1.85, and 1.147. Footnote 6 also states that the use of other code cases may be authorized by the Director of the Office of Nuclear Reactor Regulation upon request pursuant to § 50.55a(a)(3). The new paragraph (i) would specify the applicable RGs for incorporation by reference. Further, the NRC regulations in § 50.55a(a)(3) allow requests for the use of alternatives (including code cases not listed in the RGs). Therefore, providing this information in Footnote 6 will no longer be necessary. In particular, paragraph (i) would incorporate by reference proposed revisions to RGs 1.84 and 1.147 as well as a new proposed RG entitled ''Operation and Maintenance Code Case Acceptability—ASME OM Code,'' temporarily designated DG-(1089). These RGs list code cases applicable to Section III of the ASME BPV Code, Section XI of the ASME BPV Code, and the ASME OM Code, respectively, that have been accepted unconditionally, or with conditions and limitations specified by the NRC, as alternatives to specific code provisions.

Paragraph (i) would also require that licensees initially applying a code case which is listed in one of the RGs as acceptable use the most recent published version of the code case. If a licensee is applying a particular version of an approved code case, and a later version is incorporated into the applicable RG as acceptable, the licensee may continue to apply the earlier version of the code case unless the RG specifies a limitation or condition on its application or, for Section XI and OM Code Cases, until the next 120-month inservice inspection or test interval, as applicable.

Paragraph (i) would also note that the NRC will revise the RGs to delete code cases annulled by ASME. A licensee implementing a code case that is subsequently annulled may continue to apply that code case until the licensee updates its Section III code of record or until the beginning of its next inservice inspection or test interval, as applicable, unless the regulations specifically prohibit application of the code case. Licensees may request approval to apply annulled code cases through the provisions of 10 CFR 50.55a(a)(3).

4. Footnote 6 would be removed from 10 CFR 50.55a and the footnote number would be reserved.

Availability of Documents

The NRC is making the documents identified below available to interested persons through one or more of the following:

Public Document Room (PDR)

The NRC Public Document Room is located at 11555 Rockville Pike, Rockville, Maryland.

Rulemaking Website (Web)

The NRC's interactive rulemaking Website is located at *http://ruleforum.llnl.gov.* These documents may be viewed and downloaded electronically via this Website.

The NRC's Public Electronic Reading Room (PERR)

The NRC's public electronic reading room is located at *www.nrc.gov/reading-rm/adams.html.*

The NRC Staff Contact (NRC Staff)

Single copies of the **Federal Register** Notice, the Draft Regulatory Analysis, the Draft Environmental Assessment, and the proposed Regulatory Guides may be obtained from Harry S. Tovmassian, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Alternatively, you may contact Mr. Tovmassian at (301) 415–3092, or via e-mail at: *hst@nrc.gov.*

Document	PDR	Web	PERR	NRC staff
Draft Environmental Assessment	x	x	ML020160281	x
Draft Regulatory Analysis	x	x	ML020160302	x
Public Comments Received	x	.....	.....	x
Draft Regulatory Guide DG–1089—ASME OM Code Case Acceptability	x	.....	ML013120051	x
Draft Regulatory Guide DG–1090—ASME BPV, Section III Code Case Acceptability.	x	.....	ML013120011	x
Draft Regulatory Guide DG–1091—ASME BPV, Section XI, Division 1 Code Case Acceptability.	x	.....	ML013120019	x

Plain Language

The Presidential memorandum dated June 1, 1998, entitled ''Plain Language in Government Writing,'' directed that the Government's documents be written in plain language. This memorandum was published on June 10, 1998 (63 FR 31883). In complying with this directive, editorial changes have been made in these proposed revisions to improve the organization and readability of the existing language of the paragraphs being revised. These types of changes are not discussed further in this document. The NRC requests comments on the proposed rule, specifically with respect to the clarity of the language used. Comments should be sent to the address listed under the **ADDRESSES** caption above.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires agencies to use technical standards developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or is otherwise impractical. The NRC is proposing to amend its regulations to incorporate by reference three RGs that list ASME BPV and OM Code Cases which have been approved unconditionally, approved with conditions, or annulled. The ASME Code is a national consensus standard developed by participants with broad and varied interests, in which all interested parties (including the NRC and utilities) participate.

In a Staff Requirements Memorandum dated September 10, 1999, the Commission directed the NRC staff to identify all portions of an adopted voluntary consensus standard which are not adopted by the staff and to provide a justification for not adopting such portions. The NRC staff periodically revises the RGs in which the acceptability of the ASME-approved code cases is addressed. In doing so, it provides a justification for conditionally approving or disapproving certain ASME Code Cases and offers the public an opportunity to comment on its findings. Thus, the Commission's September 10, 1999, direction has been satisfied in the staff's treatment of these voluntary consensus standards.

In accordance with the National Technology Transfer and Advancement Act of 1995 and Office of Management and Budget (OMB) Circular A–119, the NRC is requesting public comment regarding whether other national or international consensus standards could be endorsed as alternatives to the ASME BPV Code Cases and the ASME OM Code Cases.

Finding of No Significant Environmental Impact: Availability

The Commission has determined, in accordance with the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this proposed rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment, and therefore an environmental impact statement is not required. This proposed rule would amend NRC's regulations to incorporate by reference three RGs that list ASME Code Cases approved by the NRC and the conditions, if any, on such approvals. Some ASME Code Cases endorsed in these RGs are interpretive of the requirements in the applicable sections of the ASME BPV Code or OM Code that are incorporated by reference in § 50.55a(b) or explain methods of compliance with the code requirements. Other code cases provide alternatives to specific ASME Code requirements. These alternatives may involve the use of advanced technology or procedures, or use new information not available when the code editions or addenda were approved. Thus, the use of code cases as alternatives to ASME Code requirements can enhance safety or reduce the probability of radiation exposure to the public. Although some code cases represent a relaxation of code

requirements, the NRC does not believe that the proposed rulemaking would increase the probability or consequences of accidents; affect the types of effluents that might be released off-site; increase occupational exposure; or increase public radiation exposure. Therefore, the NRC does not expect significant radiological impacts associated with the proposed action.

The determination of the environmental assessment associated with this proposed rule is that there would be no significant off-site impact to the public from this action. However, the public should note that the NRC is committed to complying with Executive Order (EO) 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' dated February 11, 1994, in all its actions. The NRC has determined that there are no disproportionately high adverse impacts on minority and low-income populations. In the letter and spirit of EO 12898, the NRC is requesting public comment on any environmental justice considerations or questions related to the proposed rule. The NRC defines ''environmental justice'' as ''the fair treatment and meaningful involvement of all people, regardless of race, ethnicity, culture, income, or educational level with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' Comments on any aspect of the environmental assessment may be submitted to the NRC as indicated under the **ADDRESSES** caption above. Copies of the environmental assessment may be obtained via the Internet or from the NRC's Public Document Room as described under the **ADDRESSES** caption above. The NRC has sent a copy of this proposed rule, including copies of the aforementioned environmental assessment, to the State Liaison Officers and requested their comments.

Paperwork Reduction Act Statement

This proposed rule decreases the burden on licensees for recordkeeping and reporting requirements related to examinations, tests, and repair and replacement activities during refueling outages. The annual public burden reduction for this information collection is estimated to average 136 hours for each of an estimated 69 requests. Because the burden reduction for this information collection is insignificant, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by the Office of Management and Budget, approval number 3150–0011.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

The ASME Code Cases contained in the draft RGs provide voluntary alternatives to the provisions in the ASME BPV Code and OM Code for construction, inservice inspection, and inservice testing of specific structures, systems, and components used in nuclear power plants. Implementation of these code cases is not required. NRC-approved ASME Code Cases all represent some form of burden reduction or additional operational flexibility to NRC licensees which would be difficult for the NRC to provide independent of the ASME Code publication process without a considerable additional resource commitment. The NRC has prepared a draft regulatory analysis addressing the qualitative benefits of the alternatives considered in this rulemaking and compared the cost implications associated with each. The regulatory analysis is available for inspection in the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland, Room O–1 F21. Single copies of the analysis may be obtained from Harry S. Tovmassian, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, telephone (301) 415–3092 or by e-mail at *hst@nrc.gov*.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule would affect only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

Backfit Analysis

The provisions of this proposed rule would permit licensees to voluntarily make use of NRC-approved ASME Code Cases in lieu of the requirements in the ASME BPV Code and OM Code incorporated by reference in the NRC's regulations. Licensees are at liberty to continue to comply with these codes if they wish. These proposed amendments do not involve any provision that would constitute a backfit as defined in 10 CFR Chapter 50.109(a)(1). Thus, the NRC has determined that the Backfit Rule does not apply to this proposed rule and that a backfit analysis is not required for this proposed rule.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951, as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851). Sections 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a, and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80, 50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 66 Stat. 955 (42 U.S.C. 2237).

2. Section 50.55a is amended by—

(a) Revising paragraphs (c)(3), (d)(2), (e)(2), (f)(2), (f)(3)(iii)(A), (f)(3)(iv)(A), (g)(2), (g)(3)(i) and (g)(3)(ii);

(b) Adding paragraph (i); and

(c) Removing the text of Footnote 6 and reserving the footnote number.

§ 50.55a Codes and standards.

* * * * *

(c) * * *

(3) The Code Edition, Addenda, and optional ASME Code Cases to be applied to components of the reactor coolant pressure boundary must be determined by the provisions of paragraph NCA–1140, Subsection NCA of Section III of the ASME Boiler and Pressure Vessel Code, but—

(i) The edition and addenda applied to a component must be those which are incorporated by reference in paragraph (b)(1) of this section;

(ii) The ASME Code provisions applied to the pressure vessel may be dated no earlier than the Summer 1972 Addenda of the 1971 Edition;

(iii) The ASME Code provisions applied to piping, pumps, and valves may be dated no earlier than the Winter 1972 Addenda of the 1971 Edition; and

(iv) The optional code cases applied to a component must be those listed in the Regulatory Guides that are incorporated by reference in paragraph (i) of this section.

* * * * *

(d) * * *

(2) The Code Edition, Addenda, and optional ASME Code Cases to be applied to the systems and components identified in paragraph (d)(1) of this section must be determined by the rules of paragraph NCA–1140, Subsection NCA of Section III of the ASME Boiler and Pressure Vessel Code, but—

(i) The edition and addenda must be those which are incorporated by reference in paragraph (b)(1) of this section;

(ii) The ASME Code provisions applied to the systems and components may be dated no earlier than the 1980 Edition; and

(iii) The optional code cases must be those listed in the Regulatory Guides that are incorporated by reference in paragraph (i) of this section.

(e) * * *

(2) The Code Edition, Addenda, and optional ASME Code Cases to be applied to the systems and components identified in paragraph (e)(1) of this section must be determined by the rules of paragraph NCA–1140, subsection NCA of Section III of the ASME Boiler and Pressure Vessel Code, but—

(i) The edition and addenda must be those which are incorporated by reference in paragraph (b)(1) of this section;

(ii) The ASME Code provisions applied to the systems and components may be dated no earlier than the 1980 Edition; and

(iii) The optional code cases must be those listed in the Regulatory Guides that are incorporated by reference in paragraph (i) of this section.

(f) * * *

(2) For a boiling or pressurized water-cooled nuclear power facility whose construction permit was issued on or after January 1, 1971, but before July 1, 1974, pumps and valves which are classified as ASME Code Class 1 and Class 2 must be designed and be provided with access to enable the performance of inservice tests for operational readiness set forth in editions of Section XI of the ASME Boiler and Pressure Vessel Code and Addenda incorporated by reference in paragraph (b) of this section (or the optional ASME Code Cases listed in the Regulatory Guides that are incorporated by reference in paragraph (i) of this section) in effect 6 months prior to the date of issuance of the construction permit. The pumps and valves may meet the inservice test requirements set forth in subsequent editions of this code and addenda which are incorporated by reference in paragraph (b) of this section (or the optional ASME Code Cases incorporated by reference in paragraph (i) of this section), subject to the applicable limitations and modifications listed therein.

(3) * * *

(iii) * * *

(A) Pumps and valves, in facilities whose construction permit was issued before November 22, 1999, which are classified as ASME Code Class 1 must be designed and be provided with access to enable the performance of inservice testing of the pumps and valves for assessing operational readiness set forth in Section XI of editions of the ASME Boiler and Pressure Vessel Code and Addenda incorporated by reference in paragraph (b) of this section (or the optional ASME Code Cases that are listed in the Regulatory Guides that are incorporated by reference in paragraph (i) of this section) applied to the construction of the particular pump or valve or the Summer 1973 Addenda, whichever is later.

* * * * *

(iv) * * *

(A) Pumps and valves, in facilities whose construction permit was issued before November 22, 1999, which are classified as ASME Code Class 2 and Class 3 must be designed and be provided with access to enable the performance of inservice testing of the pumps and valves for assessing operational readiness set forth in Section XI of editions of the ASME Boiler and Pressure Vessel Code and Addenda incorporated by reference in paragraph (b) of this section (or the optional ASME Code Cases listed in the Regulatory Guides that are incorporated by reference in paragraph (i) of this section) applied to the construction of the particular pump or valve or the Summer 1973 Addenda, whichever is later.

* * * * *

(g) * * *

(2) For a boiling or pressurized water-cooled nuclear power facility whose construction permit was issued on or after January 1, 1971, but before July 1, 1974, components (including supports) which are classified as ASME Code Class 1 and Class 2 must be designed and be provided with access to enable the performance of inservice examination of such components (including supports) and must meet the preservice examination requirements set forth in editions of Section XI of the ASME Boiler and Pressure Vessel Code and Addenda incorporated by reference in paragraph (b) of this section (or the optional ASME Code Cases listed in the Regulatory Guides that are incorporated by reference in paragraph (i) of this section) in effect six months prior to the date of issuance of the construction permit. The components (including supports) may meet the requirements set forth in subsequent editions of this code and addenda which are incorporated by reference in paragraph (b) of this section (or the optional ASME Code Cases listed in the Regulatory Guides that are incorporated by reference in paragraph (i) of this section), subject to the applicable limitations and modifications.

(3) * * *

(i) Components (including supports) which are classified as ASME Code Class 1 must be designed and be provided with access to enable the performance of inservice examination of such components and must meet the preservice examination requirements set forth in Section XI of editions of the ASME Boiler and Pressure Vessel Code and Addenda incorporated by reference in paragraph (b) of this section (or the optional ASME Code Cases listed in the Regulatory Guides that are incorporated by reference in paragraph (i) of this section) applied to the construction of the particular component.

(ii) Components which are classified as ASME Code Class 2 and Class 3 and supports for components which are

classified as ASME Code Class 1, Class 2, and Class 3 must be designed and be provided with access to enable the performance of inservice examination of such components and must meet the preservice examination requirements set forth in Section XI of editions of the ASME Boiler and Pressure Vessel Code and Addenda incorporated by reference in paragraph (b) of this section (or the optional ASME Code Cases listed in the Regulatory Guides that are incorporated by reference in paragraph (i) of this section) applied to the construction of the particular component.

* * * * *

(i) Approved ASME Code Cases.

(1) NRC Regulatory Guide 1.84, Revision 32, ''Design, Fabrication, and Materials Code Case Acceptability, ASME Section III;'' NRC Regulatory Guide 1.147, Revision 13, ''Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1;'' and Regulatory Guide [temporarily designated DG–1089], ''Operation and Maintenance Code Case Acceptability, ASME OM Code,'' have been approved for incorporation by reference by the Director of the Office of the Federal Register. These Regulatory Guides list ASME Code Cases which the NRC has approved for use. A notice of any changes made to the material incorporated by reference will be published in the **Federal Register**.

(i) The use of other code cases may be authorized by the Director of the Office of Nuclear Reactor Regulation upon request pursuant to § 50.55a(a)(3).

(ii) Copies of the incorporated material are available for inspection at the NRC Library, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852–2738. Copies are also available at the Office of the Federal Register, 800 N. Capitol Street, Suite 700, Washington, DC.

(iii) Requests for single copies of regulatory guides should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section, OCIO; or by e-mail to *DISTRIBUTION@NRC.GOV;* or by fax to (301) 415–2289. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(2) Design, Fabrication, and Materials Code Cases. Licensees may implement the ASME Boiler and Pressure Vessel Code Cases listed in NRC Regulatory Guide 1.84, Revision 32, without prior NRC approval subject to the following:

(i) When a licensee initially applies a listed code case, the licensee shall implement the most recent version of that code case incorporated by reference in this paragraph.

(ii) If a licensee has previously implemented a code case and a later version of the code case is incorporated by reference in this section, the licensee may apply either the previous or later version of the code case, unless a specific limitation or condition is placed on the application of that code case, in which case the modification or limitation applies.

(iii) If a code case is incorporated by reference into § 50.55a and later is annulled by the ASME, the NRC will amend 10 CFR 50.55a and Regulatory Guide 1.84 to remove the annulled code case.

(iv) A licensee that has initiated implementation of a code case that is subsequently annulled by the ASME may continue to apply that code case until the licensee updates its Section III Code of record unless § 50.55a or Regulatory Guide 1.84 specifically prohibits continued application of the annulled code case.

(3) Inservice Inspection Code Cases. Licensees may implement the ASME Boiler and Pressure Vessel Code Cases listed in Regulatory Guide 1.147, Revision 13, without prior NRC approval subject to the following:

(i) When a licensee initially applies a listed code case, the licensee shall implement the most recent version of that code case incorporated by reference in this paragraph.

(ii) If a licensee has previously implemented a code case and a later version of the code case is incorporated by reference in this section during the licensee's present inservice inspection interval, the licensee may apply either the previous or later version of the code case, unless a specific limitation or condition is placed on the application of that code case, in which case the modification or limitation applies. A licensee choosing to continue to apply the code case during the subsequent 120-month inservice inspection interval shall implement the latest version of the code case incorporated by reference in this section.

(iii) If a code case is incorporated by reference into § 50.55a and is later annulled by the ASME, the NRC will amend 10 CFR 50.55a and Regulatory Guide 1.147 to remove the annulled code case.

(iv) A licensee that has initiated implementation of a code case that is subsequently annulled by the ASME may continue to apply that code case through the end of the present inservice inspection interval unless 10 CFR 50.55a or Regulatory Guide 1.147 specifically prohibits continued use of the annulled code case. An annulled code case may not be applied in a subsequent inservice inspection interval unless implemented as an approved alternative under 10 CFR 50.55a(a)(3).

(4) Operation and Maintenance Code Cases. Licensees may implement the ASME Operation and Maintenance Code Cases listed in Regulatory Guide [temporarily designated DG–1089] without prior NRC approval subject to the following:

(i) When a licensee initially applies a listed code case, the licensee shall implement the most recent version of that code case incorporated by reference in this paragraph.

(ii) If a licensee has previously implemented a code case and a later version of the code case is incorporated by reference in this section during the licensee's present inservice testing interval, the licensee may apply either the previous or later version of the code case, unless a specific limitation or condition is placed on the application of that code case, in which case the modification or limitation applies. A licensee choosing to continue to apply the code case during the subsequent 120-month inservice testing interval shall implement the latest version of the code case incorporated by reference in this section.

(iii) If a code case is incorporated by reference into § 50.55a and later is annulled by the ASME, the NRC will amend 10 CFR 50.55a and Regulatory Guide [temporarily designated DG–1089] to remove the annulled code case.

(iv) A licensee that has initiated implementation of a code case that is subsequently annulled by the ASME may continue to apply that code case through the end of the present inservice testing interval unless 10 CFR 50.55a or Regulatory Guide [temporarily designated DG–1089] specifically prohibits continued use of the annulled code case. An annulled code case may not be applied in a subsequent inservice testing interval unless implemented as an approved alternative under 10 CFR 50.55a(a)(3).

* * * * *

Dated at Rockville, Maryland, this 1st day of March, 2002.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 02–6495 Filed 3–18–02; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–137519–01]

RIN 1545–BA09

Consolidated Returns; Applicability of Other Provisions of Law; Non-Applicability of Section 357(c); Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to consolidated returns; applicability of other provisions of law; non-applicability of section 357(c).

DATES: The public hearing originally scheduled for Thursday, March 21, 2002, at 10 a.m is cancelled.

FOR FURTHER INFORMATION CONTACT: Donna Poindexter of the Regulations Unit, Associate Chief Counsel (Income Tax and Accounting), (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on November 14, 2001 (66 FR 57021), announced that a public hearing was scheduled for March 21, 2002, at 10 a.m., in Room 4718, Internal Revenue Service Building, 1111 Constitution Avenue, NW, Washington, DC. The subject of the public hearing is proposed regulations under section 357(c) of the Internal Revenue Code. The public comment period for these proposed regulations expired on February 28, 2002.

The notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of February 28, 2002, no one has requested to speak. Therefore, the public hearing scheduled for March 21, 2002, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).

[FR Doc. 02–6607 Filed 3–15–02; 10:08 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–112991–01]

RIN 1545–AY82

Credit for Increasing Research Activities; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains corrections to a notice of proposed rulemaking and notice of public hearing relating to the computation of the research credit. This document was published in the **Federal Register** on December 26, 2001 (66 FR 66362).

FOR FURTHER INFORMATION CONTACT: Lisa J. Shuman (202) 622–3120 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of these corrections are under sections 41(c) and and 41(d) of the Internal Revenue Code.

Need for Correction

As published, the proposed regulations REG–112991–01, contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the proposed regulations REG–112991–01, which is the subject of FR. Doc. 01–31007, is corrected as follows:

§ 1.41–3 [Corrected]

1. On page 66368, column 1, § 1.41–3, paragraph (e), line 3, the language ''ending on or after the date December 21'' is corrected to read ''ending on or after December 26''.

§ 1.41–4 [Corrected]

2. On page 66369, column 1, § 1.41–4, paragraph (a)(8), paragraph (i) of *Example 2.,* line 3 from the bottom of paragraph, the language ''tests the nozzles to ensure that to ensure that'' is corrected to read ''tests the nozzles to ensure that'.

3. On page 66369, column 1, § 1.41–4, paragraph (a)(8), paragraph (ii) of *Example 2.,* line 2 the language ''painting process is a separate business'' is corrected to read ''painting process relate to a separate business'.

4. On page 66369, column 3, § 1.41–4, paragraph (a)(8), paragraph (i) of *Example 6.,* lines 5 through 8 from the bottom of the paragraph, the language ''X conducts extensive and complex scientific or laboratory testing to determine if the current model vehicle meets X's requirements.'' is removed.

5. On page 66370, column 3, § 1.41–4, paragraph (c)(6), line 2 of the paragraph heading, the language ''years beginning on or after the'' is corrected to read ''years beginning on or after'.

6. On page 66371, column 2, § 1.41–4, paragraph (c)(6)(iv)(C), line 1 of the column, the language ''leased, licensed or otherwise marketed'' is corrected to read ''leased, licensed, or otherwise marketed'.

7. On page 66371, column 2, § 1.41–4, paragraph (c)(6)(vi)(C), line 2 from the bottom of the paragraph, the language ''paragraphs (c)(6)(v)(A) and (B) of this'' is corrected to read ''paragraphs (c)(6)(vi)(A) and (B) of this'.

8. On page 66371, column 3, § 1.41–4, paragraph (c)(6)(viii), paragraph (i) of *Example 2.,* line 3, the language ''order to create an improved reserve valuation'' is corrected to read ''order to create the improved reserve valuation'.

9. On page 66372, column 3, § 1.41–4, paragraph (c)(6), paragraph (ii) of *Example 7.,* line 1, the language ''(ii) *Conclusion.* X's software is software'' is corrected to read ''(ii) *Conclusion.* X's software is''.

10. On page 66375, column 1, § 1.41–4, paragraph (c)(10), paragraph (i) of *Example 6.,* line 1 the language ''*Example 6.* (i) *Facts.* X manufacturer and'' is corrected to read ''*Example 6.* (i) *Facts.* X manufacturers and''.

11. On page 66375, column 2, § 1.41–4, paragraph (c)(10), paragraph (1) of *Example 7.* is correctly designated § 1.41–4, paragraph (c)(10), paragraph (i) of *Example 7.*

12. On page 66375, column 2, § 1.41–4, paragraph (c)(10), newly designated paragraph (i) of *Example 7.,* line 9, the language ''purchases the existing robotic equipment for'' is corrected to read ''purchases existing robotic equipment for'.

13. On page 66375, column 3, § 1.41–4, paragraph (e), line 4, the language ''December 26, 2002.'' is corrected to read ''December 26, 2001.''.

§ 1.41–8 [Corrected]

14. On page 66375, column 3, § 1.41–8, paragraph (b)(4), line 4, the language

''December 26, 2002.'' is corrected to read ''December 26, 2001.''.

Cynthia E. Grigsby.

Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).

[FR Doc. 02–6608 Filed 3–18–02; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–B–7425]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Administrator, Federal Insurance and Mitigation Administration certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376, § *67.4.*

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Washington	City of Anacortes, Skagit County.	Burrows Bay	Along shoreline to Fidalgo Head including Burrows Pass.	None	*7
		Guemes Channel	Along shoreline from Shannon Point to Fidalgo Bay.	None	*9
		Fidalgo Bay	Along shoreline to Guemes Channel	None	*7
		Rosario Strait	Along shoreline from Fidalgo Head to Shannon Point.	None	*9
Depth in feet above ground Maps are available for inspection at City Hall, 904 6th Street, Anacortes, Washington. Send comments to The Honorable Dean Maxwell, Mayor, City of Anacortes, P.O. Box 547, Anacortes, Washington 98221.					
Wyoming	Town of Dubois, Freemont.	Wind River	Approximately 3,380 feet upstream of State Highway 26.	None	+6,882
			Approximately 450 feet upstream of Soda Springs Drive.	None	+6,983
		Horse Creek	At confluence with Wind River	None	+6,912

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 1,950 feet upstream of Clendenning Street.	None	+6,953

Depth in feet above ground

Maps are available for inspection at Town Hall, 712 Meckem Street, Dubois, Wyoming.

Send comments to The Honorable Bob Baker, Mayor, Town of Dubois, Town Hall, P.O. Box 555, Dubois, Wyoming 82513

	Freemont County ..	Wind River	Approximately 2,400 feet upstream of State Highway 26.	None	+6,878
			Approximately 2,200 feet upstream of Soda Springs Drive.	None	+6,993
		Horse Creek	Approximately 2,000 feet upstream of Clendenning Street.	None	+6,954
			Approximately 1,950 feet upstream of Clendenning Street.	None	+6,955

Depth in feet above ground

Maps are available for inspection at the Planning Department, 450 North 2nd Street, Room 360, Lander, Wyoming.

Send comments to The Honorable Scott Lander, Chairman, Freemont County Commissioners, 450 North 2nd Street, Lander, Wyoming 82520.

Flooding source(s)	Location of referenced elevation	Elevation in feet (*NGVD)		Communities affected
		Effective	Modified	
KANSAS				
Sedgwick County, Kansas and Incoporated Areas				
Middle Fork Chisholm Creek	Approximately 100 feet downstream of Oliver Street ..	None	*1,363	City of Kechi.
	Just upstream of Kechi Road	None	*1,372	

Depth in feet above ground

ADDRESSES

City of Kechi:

Maps are available for inspection at 200 West Kechi Road, Kechi, Kansas.

Send comments to The Honorable Ed Parker, Mayor, City of Kechi, 200 West Kechi Road, Kechi, Kansas.

Arkansas River	Approximately 4,400 feet upstream of Washington Street.	None	*1,252	City of Derby.
Cowskin Creek	Approximately 3,500 feet downstream of State Highway 42.	None	*1,297	City of Wichita.
	Approximately 800 feet downstream of State Highway 42.	None	*1,300	
	Approximately 3,400 feet downstream Kansas Southwest Railroad.	None	*1,279	Sedgewick County.
	Just downstream of 21st Street	None	*1,345	
	Approximately 1,550 feet downstream of 53rd Street	*1,370	*1,370	
	Approximately 1,500 feet downstream of 53rd Street	*1,370	*1,370	City of Colwich.
Dry Creek North (of Cowskin Creek).	Approximately 300 feet upstream of 21st Street	None	*1,346	Sedgewick County.
	Just downstream of 167th Street	None	*1,386	
Dry Creek South (of Cowskin Creek).	Approximately 3,500 downstream of Ridge Road	None	*1,292	Sedgewick County.
	Just downstream of 103rd Street	None	*1,316	
Little Arkansas River	Just downstream of 5th Street	None	*1,339	Sedgewick County.
	Just downstream of 125th Street	*1,374	*1,372	
Middle Fork Chisholm Creek	Approximately 450 feet downstream of State Highway 254.	None	*1,360	Sedgewick County.
	Approximately 100 feet upstream of Oliver Street	None	*1,367	
Spring Creek	Approximately 2,850 feet downstream of Atchinson, Topeka, and Santa Fe Railroad.	*1,242	*1,241	Sedgewick County.
	Approximately 350 feet upstream of Woodlawn Boulevard.	*1,258	*1,258	
Spring Creek	Approximately 1,550 feet upstream of Rock Road	None	*1,270	Sedgewick County.
	Just downstream of 63rd Street	None	*1,304	

Depth in feet above ground

ADDRESSES:

Sedgwick County and Unincorporated Areas:

Maps are available for inspection at 1250 South Seneca, Wichita, Kansas.

Flooding source(s)	Location of referenced elevation	Elevation in feet (*NGVD)		Communities affected
		Effective	Modified	

Send comments to The Honorable Ben Sciortino, Chairman, Board of Commissioners, 525 North Main, Suite 320, Wichita, Kansas 67203.

City of Derby:

Maps are available for inspection at 611 Mulberry Road, Derby, Kansas.

Send comments to The Honorable Richard Standrich, Mayor, City of Derby, 611 North Mulberry Road, Derby, Kansas 67037.

City of Colwich:

Maps are available for inspection at P.O. Box 158, Colwich, Kansas.

Send comments to The Honorable Lavina Keiter, Mayor, City of Colwich, 310 South Second Street, Colwich, Kansas 67030.

City of Wichita:

Maps are available for inspection 455 North Main Street, 8th Floor, Wichita, Kansas.

Send comments to The Honorable Bob Knight, Mayor, City of Wichita, 455 North Main Street, 13th Floor, Wichita, Kansas 67202.

MISSOURI
Gasconade County, Missouri and Incorporated Areas

Frene Creek	At the confluence with the Missouri River	None	*518	City of Hermann.
	Approximately 3,400 feet upstream of High School Driveway.	None	*530	
	Approximately 2,100 feet upstream of High School Driveway.	None	*527	Gasconade County.
	Approximately 3,500 feet upstream of High School Driveway.	None	*531	

Depth in feet above ground

ADDRESSES:

Gasconade County and Unincorporated Areas:

Maps are available for inspection at City Hall, 207 Schiller Street, Hermann, Missouri.

Send comments to The Honorable Doris Binkholder, Mayor, City of Hermann, 207 Schiller Street, Hermann, Missouri 65041.

City of Hermann:

Maps are available for inspection at 119 East First Street, Hermann, Missouri.

Send comments to The Honorable Charles Schlottach, Presiding Commissioner, 119 East First Street, Room 2, Hermann, Missouri 65041.

OREGON
Clatsop County, Oregon and Incorporated Areas

Beerman Creek	Confluence with Necanicum River	None	*17	Clatsop County
	Approximately 5,000 feet upstream of Beerman Creek Road.	None	*115	
Neawanna Creek	Just downstream of 12th Avenue	*12	*12	Clatsop County.
	Approximately 1,400 feet downstream of Broadway Drive.	*13	*13	
	Approximately 1,200 feet South of intersection with U.S. 101 and Old Railroad Grade.	*16	*17	
Necanicum River	Approximately 1,100 feet downstream of Avenue U	*13	*14	Clatsop County.
	Just upstream of Howard Johnson Road	*34	*35	
	Approximately 1,600 feet downstream of Big Driveway Road.	*44	*44	
	Approximately 4,000 feet upstream of Big Driveway Road.	*58	*61	
Necanicum River Overflow	Just upstream of Rippett Road	None	*31	Clatsop County.
	Approximately 1,000 feet North of the intersection of Oregon Coast Highway and U.S. 26.	None	*41	
Upper Neawanna Creek	Confluence with Neawanna Creek	None	*15	Clatsop County.
	Approximately 860 feet upstream of Wahanna Road	None	*26	
Neawanna Creek	Just upstream of 12th Avenue	*12	*12	City of Seaside.
	Just upstream of Brodway Drive	*12	*14	
	Approximately 1,500 feet upstream of Avenue S	None	*16	
Necanicum River	Just downstream of 12th Avenue	*11	*11	City of Seaside.
	Just downstream of Avenue G	*12	*13	
	Approximately 450 feet downstream U.S. Route 101	*28	*28	
Necanicum River Overflow	Just downstream of Rippett Road	None	*31	City of Seaside.

Depth in feet above ground

ADDRESSES:

Clatsop County and Unincorporated Areas:

Maps are available for inspection at City Hall, 749 Commercial Street, Astoria, Oregon.

Send comments to The Honorable George Kiepke, Chairman, Clatsop County, Board of Commissioners, City Hall, 749 Commercial Street, Astoria, Oregon 97103.

Flooding source(s)	Location of referenced elevation	Elevation in feet (*NGVD)		Communities affected
		Effective	Modified	
City of Seaside:				
Maps are available for inspection at the Public Works Building, 1387 Avenue U, Seaside, Oregon.				
Send comments to The Honorable Rosemary Baker-Monaghan, Mayor, City of Seaside, City Hall, 989 Broadway, Seaside, Oregon 97138.				

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: March 13, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–6573 Filed 3–18–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket Nos. 02–34 and 00–248, FCC 02–45]

Satellite License Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Commission invites comment on two alternatives for revising the satellite licensing process, both of which are intended to enable the Commission to issue satellite licenses more quickly. One alternative is the first-come, first-served approach. The other alternative is to streamline the current processing round approach. In addition, the Commission seeks comment on adopting several rule revisions regardless of whether it adopts a first-come, first-served approach or streamlines the current procedure.

DATES: Comments are due on or before June 3, 2002. Reply comments are due on or before July 2, 2002. Written comments by the public on the proposed information collections are due April 18, 2002. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before May 20, 2002.

ADDRESSES: All filings must be sent to the Commission's Secretary, William F. Caton, Office of the Secretary, Federal Communications Commission, The Portals, 445 Twelfth Street, SW, Room TW–A325, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to be submitted to Judy Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jbHerman@fcc.gov and to Jeanette Thornton, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW, Washington, DC 20503 or via the Internet to jthornto@mb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Steven Spaeth, Satellite and Radiocommunication Division, International Bureau, (202) 418–1539. For additional information concerning the information collection(s) contained in this document, contact Judy Boley Herman at 202–418–0214, or via the Internet at jbHerman@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking adopted February 14, 2002 and released February 28, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Public Reference Room, 445 Twelfth Street, SW, Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 Twelfth Street, SW, Room CY–B402, Washington, DC 20554.

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24,121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

Paperwork Reduction Act

This NPRM contains proposed new and modified information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due April 18, 2002. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–XXXX (new collection).

Title: Streamlining and Other Revisions of part 25 of the Commission's

Form No.: FCC Form 312 Schedule S.

Type of Review: New collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 146.

Estimated Time Per Response: 2–18 hours.

Frequency of Response: On occasion.

Total Annual Burden: 1,436 hours.

Total Annual Costs: $193,500.

Needs and Uses: The information collection requirements accounted for in this collection are necessary to determine the technical and legal

qualifications of applicants or licensees to operate a station, transfer or assign a license, and to determine whether the authorization is in the public interest, convenience and necessity. Without such information, the Commission could not determine whether to permit respondents to provide telecommunication services in the U.S. The Commission would therefore be unable to fulfill its statutory and responsibilities in accordance with the Communications Act of 1934, as amended, and the obligations imposed on parties to the WTO Basic Telecom Agreement.

Summary of Notice of Proposed Rulemaking

Currently, the Commission uses processing rounds to review satellite applications. Under this process, when an application is filed, the commission establishes a cut-off date—that is, a deadline for other applicants to file mutually exclusive applications to be considered together with the lead application. If sufficient spectrum is not available to accommodate all the applicants, the Commission requests them to negotiate a way to accommodate all of their proposed systems. These negotiations can be long, and can cause substantial delay in licensing satellites.

The Commission seeks comment on two options for revising the satellite licensing process. One option is a first-come, first-served approach. Under this approach, the commission would initially focus its attention on the lead application. Subsequently filed mutually exclusive applications would be included in a queue according to their date and time of filing. If for any reason the Commission could not grant the lead application, it would dismiss it and begin consideration of the next application in the queue. The Commission would continue this process until it could grant an application.

The other option is modifying the current processing round procedure. The Commission seeks comment on placing a 60-day time limit on negotiations during processing rounds. The Commission also invites comment on criteria for selecting among applicants if they cannot reach agreement within 60 days. As an alternative to the proposed selection criteria, the Commission invites comment on dividing the available spectrum evenly among the qualified applicants participating in the processing round.

The Commission also seeks comment on adopting several rule revisions regardless of whether it adopts a first-come, first-served approach or streamlines the current procedure. First, the Commission seeks comment on revising the satellite license information requirements. In particular, the Commission invites comment on expanding the proposed ''Schedule S,'' which would be an attachment to the current Form FCC 312 satellite license filing form. The Commission initially proposed Schedule S in the Notice of Proposed Rulemaking in IB Docket No. 00–248, 66 FR 1283. In addition to seeking comment on revising the satellite license information requirements, the Commission invites comment on (1) eliminating financial qualifications; (2) strengthening milestone requirements; (3) eliminating the anti-trafficking rules; (4) requiring electronic filing for satellite license applications; and (5) streamlining the procedures for replacement satellite applications.

Finally, the Commission solicits comment on revising the procedure for non-U.S.-licensed satellite operators to request access to the U.S. market. Some of the proposed revisions would codify certain procedural requirements currently applicable to non-U.S.-licensed satellite operators. The rest of the proposals in this Notice of Proposed Rulemaking are intended to make the procedures applicable to non-U.S.-licensed satellite operators consistent with the procedure applicable to U.S. satellite operators.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA),[1] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice of Proposed Rulemaking provided above. The Commission will send a copy of the Notice of Proposed Rulemaking, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. 603(a). In addition, the Notice of Proposed Rulemaking and IRFA (or summaries thereof) will be published in the **Federal Register**. *See id.*

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et. seq.,* has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

A. Need for, and Objectives of, the Proposed Rules

The objective of the proposed rules is to enable the Commission to process applications for satellite licenses more quickly than it can under its current rules. These rule revisions are needed because delays in the current satellite licensing process may impose economic costs on society, and because recent changes in the International Telecommunication Union procedures require us to issue satellite licenses more quickly in order to meet U.S. international treaty obligations. In addition, the current satellite licensing process is not well suited to some satellite systems employing current technology. Finally, revision of the satellite licensing process will facilitate the Commission's efforts to meet its spectrum management responsibilities.

B. Legal Basis

The proposed action is supported by sections 4(i), 7(a), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 303(c), 303(f), 303(g), 303(r).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules May Apply

The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the proposed rules, if adopted.[2] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[3] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[4] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[5] A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not

[2] 5 U.S.C. 603(b)(3).

[3] Id. 601(6).

[4] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.'' 5 U.S.C. 601(3).

[5] Small Business Act, 15 U.S.C. 632 (1996).

dominant in its field.''[6] Nationwide, as of 1992, there were approximately 275,801 small organizations.[7] ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.''[8] As of 1992, there were approximately 85,006 such jurisdictions in the United States.[9] This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.[10] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities. Below, we further describe and estimate the number of small entity licensees that may be affected by the proposed rules, if adopted.

The rules proposed in this Notice of Proposed Rulemaking would affect satellite operators, if adopted. The Commission has not developed a definition of small entities applicable to satellite operators. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Satellite Telecommunications.[11] This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts.[12] 1997 Census Bureau data indicate that, for 1997, 273 satellite communication firms had annual receipts of under $10 million. In addition, 24 firms had receipts for that year of $10 million to $24,999,990.[13]

In addition, Commission records reveal that there are approximately 240 space station operators licensed by this Commission. We do not request or collect annual revenue information, and thus are unable to estimate of the number of licensees that would constitute a small business under the SBA definition. Small businesses may not have the financial ability to become space station licensees because of the high implementation costs associated with satellite systems and services.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

With few exceptions, none of the proposed rules in this notice are expected to increase the reporting, record keeping and other compliance requirements of any telecommunications carrier. The exceptions are as follows: (1) We propose requiring space station applicants to provide the antenna gain pattern contour diagrams in the .gxt format required in submissions to the ITU. (2) We propose requiring space station applicants to specify power flux density (PFD) values at angles of arrival equal to 5, 10, 15, 20 and 25 degrees. (3) We propose expanding Schedule S so that space station license applicants can provide information on polarization isolation, polarization switching, and alignment of polarization vectors relative to the equatorial plan. (4) We propose mandating that applicants certify that they will comply with the service area requirements of 47 CFR 25.143, 25.145, and 25.208, and the out-of-band emission requirements of 47 CFR 25.202.

These proposed increased reporting requirements are necessary because we also propose substantially decreasing the administrative burdens associated with the current satellite licensing process. Specifically, there are two options proposed in this Notice of Proposed Rulemaking for reforming the satellite licensing process. Under one of the options, the first-come, first-served approach, there may be an increased incentive to apply for a satellite license merely to sell it. In addition, under both options, we invite comment on eliminating our current method of preventing speculation, the anti-trafficking rule. Therefore, more detailed reporting requirements will be needed in the event that we adopt these proposed license procedure reforms to help us determine whether an applicant is seeking a satellite license merely for speculative purposes. The anti-trafficking rule is more administratively burdensome than the proposed increased data collections.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603(c).

We have attempted not to foreclose any option. One alternative we have not embraced is the need to adopt any filing window in the event that we adopt a first-come, first-served procedure.[14] We believe that the alternative of a first-come, first-served satellite licensing procedure without a filing window better serves the interests of all possible applicants, including small entity applicants. For instance, for some applicants, the first-come, first-served procedure may be less expensive than maintaining an application throughout the longer processing round procedure under the Commission's current rules.[15] A filing window in a first-come, first-served satellite licensing procedure would tend to duplicate some of the delay inherent in the processing round procedure under the Commission's current rules.[16]

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Ordering Clauses

Pursuant to Sections 4(i), 7(a), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 303(c), 303(f), 303(g), 303(r), this Notice of Proposed Rulemaking is hereby *Adopted.*

The Consumer Information Bureau, Reference Information Center, *Shall send* a copy of this Order, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–6525 Filed 3–18–02; 8:45 am]

BILLING CODE 6712–01–P

[6] 5 U.S.C. 601(4).

[7] 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[8] 5 U.S.C. 601(5).

[9] U.S. Dept. of Commerce, Bureau of the Census, ''1992 Census of Governments.''

[10] Id.

[11] ''This industry comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Small Business Administration, 1997 NAICS Definitions, NAICS 513340.

[12] 13 CFR 120.121, NAICS code 513340.

[13] U.S. Census Bureau, 1997 Economic Census, Subject Service: Information, ''Establishment and Firm Size,'' Table 4, NAICS 513340 (Issued Oct. 2000).

[14] See Notice of Proposed Rulemaking at paragraph 44.

[15] See Notice of Proposed Rulemaking at paragraph 41.

[16] See Notice of Proposed Rulemaking at paragraph 44.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–487; MM Docket No. 02–42; RM–10382]

Radio Broadcasting Services; Chester and Westwood, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Tom F. Huth, permittee of Station KTOR(FM), Channel 259A, Chester, California, requesting the reallotment of Channel 259A from Chester to Westwood, California, and modification of its authorization accordingly, pursuant to the provisions of section 1.420(i) of the Commission's rules. The coordinates for requested Channel 259A at Westwood, California are 40–14–21 NL and 121–1–52 WL.

Petitioner's reallotment proposal complies with the provisions of section 1.420(i) of the Commission's rules, and therefore, the Commission will not accept competing expressions of interest in the use of Channel 259A at Westwood, California, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before April 22, 2002, and reply comments on or before May 7, 2002.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Law Office of Dennis J. Kelly; Post Office Box 6648; Annapolis, Maryland 21401–0648.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 02–42, adopted February 20, 2002, and released March 1, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

The provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 259A at Chester and adding Westwood, Channel 259A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 02–6374 Filed 3–18–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–489; MM Docket No. 01–242; RM–10248]

Radio Broadcasting Services; Highland, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: Charles Crawford filed a petition for rule making proposing the allotment of Channel 236A at Highland, Michigan, as the community's first local aural transmission service. *See* 66 FR 49593, September 28, 2001. On November 2, 2001, petitioner filed a motion for dismissal. A showing of continuing interest is required before a channel will be allotted. It is the Commission's policy to refrain from making an allotment to a community absent an expression of interest. Therefore, at the request of petitioner, we dismiss the instant proposal.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–242, adopted February 20, 2002, and released March 1, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 02–6373 Filed 3–18–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AI30

Migratory Bird Hunting; Proposed 2002–03 Migratory Game Bird Hunting Regulations (Preliminary) With Requests for Indian Tribal Proposals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter Service or we) proposes to establish annual hunting regulations for certain migratory game birds for the 2002–03 hunting season. We annually prescribe outside limits (frameworks) within which States may select hunting seasons. This proposed rule provides the regulatory schedule, announces the Flyway Council meetings, and describes proposed changes to the regulatory alternatives for the 2002–03 duck hunting seasons. We also request proposals from Indian tribes that wish to establish special migratory bird hunting regulations on Federal Indian reservations and ceded

lands. Migratory game bird hunting seasons provide hunting opportunities for recreation and sustenance; aid Federal, State, and tribal governments in the management of migratory game birds; and permit harvests at levels compatible with migratory bird population status and habitat conditions.

DATES: You must submit comments on the proposed regulatory alternatives for the 2002–03 duck hunting seasons by May 1, 2002. You must submit comments for proposed early-season frameworks by July 30, 2002, and for proposed late-season frameworks by August 30, 2002. Tribes should submit proposals and related comments by June 1, 2002.

ADDRESSES: Send your comments on the proposals to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634–ARLSQ, 1849 C Street, NW, Washington, DC 20240. All comments received, including names and addresses, will become part of the public record. You may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel at: Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634–ARLSQ, 1849 C Street, NW, Washington, DC 20240, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Background and Overview

Migratory game birds are those bird species so designated in conventions between the United States and several foreign nations for the protection and management of these birds. Under the Migratory Bird Treaty Act (16 U.S.C. 703–712), the Secretary of the Interior is authorized to determine when ''hunting, taking, capture, killing, possession, sale, purchase, shipment, transportation, carriage, or export of any * * * bird, or any part, nest or egg'' of migratory game birds can take place and to adopt regulations for this purpose. These regulations must be written based on ''the zones of temperature and the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of such birds'' and must be updated annually. This responsibility has been delegated to the Fish and Wildlife Service (Service) of the Department of the Interior as the lead Federal agency for managing and conserving migratory birds in the United States.

The Service develops migratory bird hunting regulations by establishing the frameworks, or outside limits, for season lengths, bag limits, and areas for migratory game bird hunting. Acknowledging regional differences in hunting conditions, the Service has administratively divided the nation into four Flyways for the primary purpose of managing waterfowl. Each Flyway (Atlantic, Mississippi, Central, and Pacific) has a Flyway Council, a formal organization generally composed of one member from each State and Province in that Flyway. The Flyway Councils, established through the International Association of Fish and Wildlife Agencies (IAFWA), also assist in researching and providing management techniques for Federal, State, and Provincial Governments, as well as private conservation agencies and the general public.

The migratory bird hunting regulations, located at 50 CFR 20, are constrained by three primary factors. Legal and administrative considerations dictate how long the rulemaking process will last. Most importantly though, the biological cycle of migratory birds controls the timing of data-gathering activities and thus the date on which results are available for consideration. The process includes two separate regulations-development schedules, based on early- and late-hunting season regulations. Early seasons pertain to all migratory game bird species in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; migratory game birds other than waterfowl (i.e., dove, woodcock, etc.); and special early waterfowl seasons, such as teal or resident Canada geese. The early season generally begins prior to October 1. Late seasons generally start on or after October 1 and include most waterfowl seasons not already established.

There are basically no differences in the processes for establishing either early- or late-hunting seasons. For each cycle, Service biologists gather, analyze, and interpret survey data and provide this information to all those involved in the process through a series of published status reports and presentations to Flyway Councils and other interested parties. Because the Service is required to take abundance of migratory birds and other factors into consideration, the Service undertakes a number of surveys throughout the year in conjunction with Service Regional Offices, the Canadian Wildlife Service, and State and Provincial wildlife-management agencies. Factors such as population size and trend, geographical distribution, annual breeding effort, the condition of breeding, wintering habitat, the number of hunters, and the anticipated harvest are considered to determine the appropriate frameworks for each species.

After frameworks, or outside limits, are established for season lengths, bag limits, and areas for migratory game bird hunting, migratory game bird management becomes a cooperative effort of State and Federal governments. After Service establishment of final frameworks for hunting seasons, the States may select season dates, bag limits, and other regulatory options for the hunting seasons. States may be more conservative in their selections than the Federal frameworks but never more liberal.

Notice of Intent To Establish Open Seasons

This notice announces our intent to establish open hunting seasons and daily bag and possession limits for certain designated groups or species of migratory game birds for 2002–03 in the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands, under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K of 50 CFR part 20.

For the 2002–03 migratory game bird hunting season, we will propose regulations for certain designated members of the avian families Anatidae (ducks, geese, and swans); Columbidae (doves and pigeons); Gruidae (cranes); Rallidae (rails, coots, moorhens, and gallinules); and Scolopacidae (woodcock and snipe). We describe these proposals under Proposed 2002–03 Migratory Game Bird Hunting Regulations (Preliminary) in this document. We published definitions of waterfowl flyways and mourning dove management units, as well as a description of the data used in and the factors affecting the regulatory process, in the March 14, 1990, **Federal Register** (55 FR 9618).

Regulatory Schedule for 2002–03

This document is the first in a series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations. We will publish additional supplemental proposals for public comment in the **Federal Register** as population, habitat, harvest, and other information become available.

Because of the late dates when certain portions of these data become available, we anticipate abbreviated comment periods on some proposals. Special circumstances limit the amount of time we can allow for public comment on these regulations. Specifically, two considerations compress the time for the

rulemaking process: the need, on one hand, to establish final rules early enough in the summer to allow resource agencies to select and publish season dates and bag limits prior to the beginning of hunting seasons and, on the other hand, the lack of current status data on most migratory game birds until later in the summer. Because the regulatory process is strongly influenced by the times when information is available for consideration, we divide the regulatory process into two segments: early seasons and late seasons.

Major steps in the 2002–03 regulatory cycle relating to open public meetings and **Federal Register** notifications are illustrated in the diagram at the end of this proposed rule. All publication dates of **Federal Register** documents are target dates.

All sections of this and subsequent documents outlining hunting frameworks and guidelines are organized under numbered headings. These headings are:

1. Ducks
   A. General Harvest Strategy
   B. Regulatory Alternatives
   C. Zones and Split Seasons
   D. Special Seasons/Species Management
   i. September Teal Seasons
   ii. September Teal/Wood Duck Seasons
   iii. Black ducks
   iv. Canvasbacks
   v. Pintails
   vi. Scaup
   vii. Youth Hunt
2. Sea Ducks
3. Mergansers
4. Canada Geese
   A. Special Seasons
   B. Regular Seasons
   C. Special Late Seasons
5. White-fronted Geese
6. Brant
7. Snow and Ross's (Light) Geese
8. Swans
9. Sandhill Cranes
10. Coots
11. Moorhens and Gallinules
12. Rails
13. Snipe
14. Woodcock
15. Band-tailed Pigeons
16. Mourning Doves
17. White-winged and White-tipped Doves
18. Alaska
19. Hawaii
20. Puerto Rico
21. Virgin Islands
22. Falconry
23. Other

Later sections of this and subsequent documents will refer only to numbered items requiring your attention. Therefore, it is important to note that we will omit those items requiring no attention and remaining numbered items will be discontinuous and appear incomplete.

We will publish final regulatory alternatives for the 2002–03 duck hunting seasons in early June. We will publish proposed early-season frameworks in mid-July and late-season frameworks in mid-August. We will publish final regulatory frameworks for early seasons on or about August 20, 2002, and those for late seasons on or about September 15, 2002.

Announcement of Flyway Council Meetings

Service representatives will be present at the individual meetings of the four Flyway Councils this April. Although agendas are not yet available, these meetings usually commence at 8:00 a.m. on the days indicated. All meetings will be held April 2, 2002, at the Hyatt Regency at Reunion Center, 300 Reunion Boulevard, Dallas, Texas.

Review of Public Comments

This proposed rulemaking contains the proposed regulatory alternatives for the 2002–03 duck hunting seasons. This proposed rulemaking also describes other recommended changes or specific preliminary proposals that vary from the 2001–02 frameworks and issues requiring early discussion, action, or the attention of the States or tribes. We will publish responses to all proposals and written comments when we develop final frameworks. We seek additional information and comments on the recommendations in this proposed rule.

Consolidation of Notices

For administrative purposes, this document consolidates the notice of intent to establish open migratory bird hunting seasons and the request for tribal proposals with the preliminary proposals for the annual hunting regulations-development process. We will publish the remaining proposed and final rulemaking documents separately. For inquiries on tribal guidelines and proposals, tribes should contact the following personnel:

Region 1—Brad Bortner, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; (503) 231–6164.

Region 2—Jeff Haskins, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103; (505) 248–7885.

Region 3—Steve Wilds, U.S. Fish and Wildlife Service, Federal Building, One Federal Drive, Fort Snelling, Minnesota 55111–4056; (612) 713–5432.

Region 4—Frank Bowers, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 324, Atlanta, Georgia 30345; (404) 679–4000.

Region 5—George Haas, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589; (413) 253–8576.

Region 6—John Cornely, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Building, Denver, Colorado 80225; (303) 236–8145.

Region 7—Robert Leedy, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503; (907) 786–3423.

Requests for Tribal Proposals

Background

Beginning with the 1985–86 hunting season, we have employed guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467) to establish special migratory bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands. We developed these guidelines in response to tribal requests for our recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal and nontribal members throughout their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks, but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, tribal regulations established under the guidelines must be consistent with the annual March 10 to September 1 closed season mandated by the 1916 Convention Between the United States and Great Britain (for Canada) for the Protection of Migratory Birds (Convention). The guidelines are applicable to those tribes that have reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and ceded lands. They also may be applied to the establishment of migratory bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations where tribes have full wildlife management authority over such hunting, or where the tribes and affected States otherwise have reached

agreement over hunting by nontribal members on non-Indian lands.

Tribes usually have the authority to regulate migratory game bird hunting by nonmembers on Indian-owned reservation lands, subject to our approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing migratory bird hunting by non-Indians on these lands. In such cases, we encourage the tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, we will consult with a tribe and State with the aim of facilitating an accord. We also will consult jointly with tribal and State officials in the affected States where tribes may wish to establish special hunting regulations for tribal members on ceded lands. As explained in previous rulemaking documents, it is incumbent upon the tribe and/or the State to request consultation as a result of the proposal being published in the **Federal Register**. We will not presume to make a determination, without being advised by either a tribe or a State, that any issue is or is not worthy of formal consultation.

One of the guidelines provides for the continuation of tribal members' harvest of migratory game birds on reservations where such harvest is a customary practice. We do not oppose this harvest, provided it does not take place during the closed season required by the Convention, and it is not so large as to adversely affect the status of the migratory bird resource. For several years, we have reached annual agreement with tribes for migratory bird hunting by tribal members on their lands or on lands where they have reserved hunting rights. We will continue to consult with tribes that wish to reach a mutual agreement on hunting regulations for on-reservation hunting by tribal members.

Tribes should not view the guidelines as inflexible. We believe that they provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian tribes while ensuring that the migratory bird resource receives necessary protection. The conservation of this important international resource is paramount. Use of the guidelines is not required if a tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

Details Needed in Tribal Proposals

Tribes that wish to use the guidelines to establish special hunting regulations for the 2002–03 hunting season should submit a proposal that includes:

(1) The requested hunting season dates and other details regarding the proposed regulations;

(2) Harvest anticipated under the proposed regulations;

(3) Methods that will be employed to measure or monitor harvest (mail-questionnaire survey, bag checks, etc.);

(4) Steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would seriously impact the migratory bird resource; and

(5) Tribal capabilities to establish and enforce migratory bird hunting regulations.

A tribe that desires the earliest possible opening of the waterfowl season should specify this request in their proposal, rather than request a date that might not be within the final Federal frameworks. Similarly, unless a tribe wishes to set more restrictive regulations than Federal regulations will permit, the proposal should request the same daily bag and possession limits and season length for ducks and geese that Federal regulations are likely to permit the States in the Flyway in which the reservation is located.

Tribal Proposal Procedures

We will publish details of tribal proposals for public review in later **Federal Register** documents. Because of the time required for our and public review, Indian tribes that desire special migratory bird hunting regulations for the 2002–03 hunting season should submit their proposals as soon as possible, but no later than June 1, 2002. Tribes should direct inquiries regarding the guidelines and proposals to the appropriate Service Regional Office listed above under the caption Consolidation of Notices. Tribes that request special migratory game bird hunting regulations for tribal members on ceded lands should send a courtesy copy of the proposal to officials in the affected State(s).

Public Comments Solicited

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments received. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. We invite interested persons to participate in this rulemaking by submitting written comments to the address indicated under the caption **ADDRESSES.**

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may also be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

You may inspect comments received on the proposed annual regulations during normal business hours at the Service's office in room 634, 4401 North Fairfax Drive, Arlington, Virginia. For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. As in the past, we will summarize all comments received during the comment period and respond to them after the closing date in any final rules.

NEPA Consideration

NEPA considerations are covered by the programmatic document, ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with the Environmental Protection Agency on June 9, 1988. We published Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled ''Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands'' is available from the address indicated under the caption **ADDRESSES.**

In a proposed rule published in the April 30, 2001, **Federal Register** (66 FR 21298), we expressed our intent to begin

the process of developing a new EIS for the migratory bird hunting program. This issue is discussed below under ''Proposed 2002–03 Migratory Game Bird Hunting Regulations.''

Endangered Species Act Consideration

Prior to issuance of the 2002–03 migratory game bird hunting regulations, we will consider provisions of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531–1543; hereinafter the Act) to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause us to change proposals in this and future supplemental proposed rulemaking documents.

Executive Order (E.O.) 12866

This rule is economically significant and was reviewed by the Office of Management and Budget (OMB) under E.O. 12866. The migratory bird hunting regulations are economically significant and are annually reviewed by OMB under E.O. 12866. As such, a cost/benefit analysis was prepared in 1998 and is further discussed below under the heading Regulatory Flexibility Act. Copies of the cost/benefit analysis are available upon request from the address indicated under the caption **ADDRESSES.**

E.O. 12866 requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections?

(5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the rule?

(6) What else could we do to make the rule easier to understand?

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail, and the Service issued a Small Entity Flexibility Analysis (Analysis) in 1998. The Analysis documented the significant beneficial economic effect on a substantial number of small entities. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The Analysis utilized the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns from which it was estimated that migratory bird hunters would spend between $429 million and $1.084 billion at small businesses in 1998. Copies of the Analysis are available upon request from the Division of Migratory Bird Management.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808 (1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 09/30/2004). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned clearance number 1018–0023 (expires 07/30/2003). The information from this survey is used to estimate the magnitude and the geographical and temporal distribution of the harvest, and the portion it constitutes of the total population.

A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that this rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of E.O. 12988.

Takings Implication Assessment

In accordance with E.O. 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—E.O. 13211

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this proposed rule is a significant regulatory action under E.O. 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs.

Any State or tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with E.O. 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2002–03 hunting season are authorized under 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742 a–j.

Dated: February 1, 2002.

Joseph E. Doddridge,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Proposed 2002–03 Migratory Game Bird Hunting Regulations (Preliminary)

Pending current information on populations, harvest, and habitat conditions, and receipt of recommendations from the four Flyway Councils, we may defer specific regulatory proposals. With the exception of modifying the framework opening and closing dates within the regulatory alternatives, we are proposing no change from the final 2001–02 frameworks of August 21 and September 27, 2001 (66 FR 44010 and 49478). Other issues requiring early discussion, action, or the attention of the States or tribes are contained below:

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) General Harvest Strategy, (B) Regulatory Alternatives, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management. Only those containing substantial recommendations are discussed below.

A. General Harvest Strategy

We recommend the continued use of adaptive harvest management (AHM) to help determine appropriate duck-hunting regulations for the 2002–03 season. The current AHM protocol is used to evaluate five alternative regulatory levels based on the population status of mallards (special hunting restrictions are enacted for species of special concern, such as canvasbacks and pintails). The regulatory alternative in the Mississippi, Central, and Pacific Flyways is prescribed based on the status of mallards and breeding-habitat conditions in central North America (Federal survey strata 1–18, 20–50 and 75–77, and State surveys in Minnesota, Wisconsin, and Michigan). The recommended regulatory alternative for the Atlantic Flyway is based on the population status of mallards breeding in eastern North America (Federal survey strata 51–54 and 56, and State surveys in New England and the mid-Atlantic region) and, thus, may differ from that in the remainder of the country. A specific regulatory alternative for each of the Flyways during the 2002–03 season will be proposed after survey information becomes available in late summer.

Last year, the AHM Working Group (an interagency, technical advisory committee) identified a number of concerns with the current AHM protocol for mallards. These concerns focused on the models of population dynamics used to evaluate various regulatory options, and include: (1) Evidence that all models of mallard population dynamics may predict biased annual growth rates; (2) indications that the current method of comparing predicted and observed population sizes may unrealistically inflate the rate at which we can identify the most accurate population model; and (3) the need for improved survival and reproductive models that more effectively capture the range of possible population dynamics and effects of harvest. These concerns have important management implications, and we expect to propose remedial measures for the 2002–03 hunting season. Our proposals will be based on consultations with the AHM Working Group and the Flyway Councils, and will be made available for public comment later in the year.

Finally, we expressed our desire last year to begin the process of developing a new Environmental Impact Statement for migratory bird hunting (66 FR 21302). We reiterate the need to focus on three key themes:

(1) Goal setting—AHM can produce optimal regulatory decisions in the face of uncertainty, if and only if, there is agreement about the goals and objectives of harvest management. Clearly, the goals of duck harvest management extend well beyond simple measures of hunter success and population size, and many of the difficulties in duck harvest management today probably relate more to ambiguity in objectives, rather than to uncertainty about biological impacts. Disagreement about management objectives poses a serious threat to the long-term viability of AHM.

(2) Limits to system control—There are both theoretical and practical limits to our ability to predict, control, and measure the size of waterfowl populations and harvest and, as a consequence, operational constraints on short-term hunting opportunity and on the learning needed to increase long-term performance. The waterfowl management community needs to better explore, understand, and acknowledge these limits, and to develop regulatory alternatives and strategies that avoid the most undesirable consequences of those limits, while meeting reasonable demands for hunting opportunity.

(3) Management scale—The history of duck harvest management has been characterized by efforts to account for increasingly more spatial, temporal, and taxonomic variability in waterfowl demographics in a continuing effort to maximize hunting opportunity. We have begun to question the wisdom of this approach, given the inevitable tradeoff between harvest benefits and the direct and indirect costs of managing at progressively finer scales. The level of resolution that ultimately will be most appropriate in the AHM process remains to be seen, but we are increasingly concerned about what we see as unrealistic expectations for accommodating small-scale variation in waterfowl population dynamics.

We look forward to exploring these and other duck-harvest management issues with the Flyway Councils, other stakeholders, and the general public during the coming year.

B. Regulatory Alternatives

The Service regulates the earliest and latest dates within which States can select duck-hunting seasons. Historically, these dates have been approximately October 1 to January 20. The effects of extending these dates so that seasons could open earlier and/or later have been the subject of extensive debate within the waterfowl management community. Biological impacts and impacts on harvest resulting from such changes remain uncertain.

In 1998, Congress specified that the 1998–99 hunting season in Alabama, Arkansas, Kentucky, Louisiana, Mississippi, and Tennessee could

extend to January 31, with a 9-day reduction from the 60-day season established for other States. The 9-day reduction was intended to offset the anticipated increase in harvest that was expected to occur. Since 1998, Alabama, Mississippi, and Tennessee chose to use this extended closing date (January 31) with the 9-day offset. We have continued to monitor duck harvests in these States but do not yet have sufficient data to determine definitively whether the magnitude of season-length reduction is accomplishing its intended purpose.

In August 2000, the Flyway Council Consultants to the Service Regulations Committee requested that the Service evaluate the projected impacts of extending the framework opening date for duck hunting from the Saturday nearest October 1 to the Saturday nearest September 24 and extending the closing date from the Sunday nearest January 20 to the last Sunday in January. The evaluation, completed in January 2001, was based on a canvassing of all Flyways to determine which States would use the extension. The principal conclusion of this review reaffirmed earlier assessments that nationwide use of framework-date extensions might significantly reduce the frequency of more liberal duck hunting seasons. This is primarily a result of greater uncertainty in our ability to predict the impacts of such fundamental changes in the regulations.

In 2001, the National Flyway Council (NFC) submitted a letter signed by the Atlantic, Central, and Pacific Flyway Councils, and the Lower-Region Regulations Committee of the Mississippi Flyway Council, that formally recommended an experimental framework opening date of the Saturday nearest September 24 and a framework closing date of the last Sunday in January, with no offsets, in the ''moderate'' and ''liberal'' regulatory packages, for the 2001–03 duck seasons. The letter further recommended that the framework dates be applicable either Statewide or in zones and that the Service use an evaluation of the framework date extensions for the next 3 years as a basis for establishing future framework dates.

We considered the recommendation, but declined to offer any changes to existing framework dates for duck hunting in the 2001–02 hunting season (66 FR 38498) due to a number of unresolved issues. Among those were: (1) Uncertainty about changes in mallard harvest rates that might occur with implementation of framework-date extensions; (2) the need for a reliable monitoring program for estimating realized harvest rates of mallards, i.e., current estimates of band-reporting rates; (3) the potential for adverse biological impacts to species other than mallards, such as wood ducks, and especially those below objective levels (e.g., pintails, scaup); and (4) certain administrative and procedural issues involved in extending framework dates, particularly the timing of key meetings, publication of proposed and final rules, and the availability of adequate public notice and opportunity for comment. Other long-standing concerns were: (1) Changes in distribution of the harvest both within and among Flyways; (2) the need to maintain stability of regulatory packages; and (3) the potential impact of late-season extensions on ducks returning to the breeding grounds in the spring. We also emphasized that any uncertainty surrounding the impact of framework-date extensions on mallard numbers could be addressed most effectively using an adaptive management approach. This approach would not only help identify the effects of framework-date extensions but also ensure that we can account for uncertainty associated with harvest and population impacts in each regulatory decision.

On October 11, 2001, upon reconsideration of the previously established ''liberal'' regulatory alternative, we proposed (66 FR 51919) a framework opening date of September 29 and a closing date of January 31, with no reduction (offset) in season length, for the 2001–02 hunting season in the States of Alabama, Arkansas, Kentucky, Louisiana, Mississippi, and Tennessee. This proposal was in contrast to framework-date extensions existing since 1998 in Alabama, Mississippi, and Tennessee, of a closing date of January 31, accompanied by a 9-day reduction in season length.

The vast majority of comments received during the comment period were strongly opposed to this proposal. Consequently, we withdrew the proposal on November 23, 2001 (66 FR 58707) and stated that we would begin immediately to work with the Flyway Councils to develop a resolution to the framework-date issue prior to the 2002–03 duck hunting season.

On December 2, 2001, we met in Wichita, Kansas, with a newly formed working group of the International Association of Fish and Wildlife Agencies (IAFWA). This group, comprised of State representatives, including representatives from each Flyway Council, was formed to facilitate early coordination with the Flyway Councils and States. The discussion focused on the original 2001 recommendation submitted through the NFC and how the current regulations-setting process and schedule would need to be changed in order to accommodate changes in frameworks dates should such a proposal be adopted through the usual regulatory process. This early coordination was considered necessary since meetings throughout the process, which are scheduled well in advance, might have to be changed. It was concluded that changes to the current process could be made to allow for earlier and later season extensions as proposed by the Flyway Councils.

Based on discussions with Flyway Council representatives, and using the above recommendation to extend season dates, we propose the following: (1) To modify the current set of regulatory alternatives changing the framework opening date from the Saturday nearest October 1 to the Saturday nearest September 24 and change the closing date from the Sunday nearest January 20 to the last Sunday in January, with no offset in days or bag limits, in the ''moderate'' and ''liberal'' regulatory alternatives; (2) to keep these changes to framework dates in place for 3 years to allow for a reasonable opportunity to monitor the impacts of these extensions on harvest distribution and rates of harvest prior to considering any subsequent use; (3) to make any changes to frameworks within the context of AHM; and (4) to hold the Flyway Technical Committee and Council meetings and the Service Regulations Committee meeting for late-season hunting proposals approximately 1 week earlier than normally scheduled to accommodate administrative and procedural requirements.

Based on our recent assessment, ''Framework-date Extensions for Duck Hunting in the United States: Projected Impacts & Coping With Uncertainty (January 2001)'', we expect this proposal to result in some redistribution of the harvest, increases in harvest of mallards and perhaps other species, and potentially less frequent liberal regulations. These impacts were summarized in the June 14, 2001, **Federal Register** (66 FR 32297).

Regarding administrative and procedural issues, the Service underscores the need to proceed carefully with modifications to the existing timetable for regulations development. That is, if additional changes to the schedule become necessary, beyond those already proposed to accommodate early-season framework extensions, significant problems could arise. Included in these concerns would be the availability of

survey information prior to the development of regulatory proposals.

In light of the uncertainty about the impacts of extended framework dates, we support the recommendation of the Flyway Councils that changes must be accomplished within the context of AHM. Several years ago (April 1999), the AHM Working Group considered an adaptive approach to framework-date extensions and developed a set of principles and general guidelines, which we continue to support. Those principles are: (1) The need for stability in regulatory alternatives so that associated levels of duck harvest can be estimated reliably; (2) the advisability of framework-date proposals with minimal complexity (i.e., few, if any, special cases or dispensations); (3) the specification of framework regulations that are uniform within Flyways; (4) the need for improved resource monitoring to provide necessary feedback; and (5) a cautionary statement that regulatory changes far beyond the realm of experience undermine our ability to make data-based predictions about harvest impacts and, thus, undermine the integrity of the AHM process.

In light of these concerns, we are requesting the AHM Working Group to evaluate the framework-date proposal contained herein, and to recommend appropriate changes to the current AHM technical protocol. At a minimum, we believe that the AHM Working Group should: (1) Review and update the predictions of mallard harvest rates under the current regulatory alternatives (without framework-date extensions); (2) determine how we will account for the uncertainty about the impacts of extended framework dates; (3) recommend changes to resource monitoring programs that will be necessary to permit an evaluation of framework-date extensions; and (4) provide guidelines for assessing impacts to species other than mallards (especially those species below objective levels). Finally, in evaluating the current framework-date proposal, we urge all interested parties to consider how improvements to resource monitoring programs would be funded, whether the risk of more restrictive hunting seasons (i.e., shorter season lengths and smaller bag limits) is acceptable, and whether some re-distribution of duck harvest to more northerly and more southerly States is desirable.

In conclusion, the Service re-emphasizes its commitment to monitoring the impacts of these proposed extensions of framework dates over a 3-year period, particularly with regard to any effects on harvest distribution and rates of harvest. It is essential, therefore, that improvements to existing monitoring programs, such as the need to estimate the rate at which hunters voluntarily report band encounters (band reporting rate), be in place during this evaluation period. Resulting improvements in the estimation of harvest rates of mallards and other duck species, along with other elements of ongoing survey activities, will play a major role in the evaluation effort. Any decision to continue these framework extensions, or implement more restrictive hunting seasons, will be contingent on the outcome of this assessment.

Thus, as indicated above, for the 2002–03 season, we are proposing to modify the four regulatory alternatives used last year (see accompanying table for specifics of the proposed regulatory alternatives). Alternatives are specified for each Flyway and are designated as ''VERY RES'' for the very restrictive, ''RES'' for the restrictive, ''MOD'' for the moderate, and ''LIB'' for the liberal alternative. We will announce final regulatory alternatives in early June. Public comments will be accepted until May 1, 2002, and should be sent to the address under the caption **ADDRESSES.**

D. Special Seasons/Species Management

iv. Canvasbacks

Since 1994, the Service has followed a canvasback harvest strategy such that, if population status and production are sufficient to permit a harvest of one canvasback per day nationwide for the entire length of the regular duck season, while attaining a spring population objective of 500,000 birds, the season on canvasbacks should be opened. Otherwise, the season on canvasbacks should be closed nationwide. Lat spring, the estimate of canvasback abundance was 580,000 birds and the number of ponds in Prairie Canada in May (2.7 million) was 20% below the long-term average. The size of the spring population, together with natural mortality and below-average expected production due to the relatively dry conditions, was insufficient to offset expected mortality associated with a canvasback season lasting the entire length of the ''liberal'' regulatory alternative and still attain the population objective of 500,000 canvasbacks in the spring of 2002.

While we continued to support the harvest strategy and the model adopted in 1994, despite the reduced numbers and below-average production forecast last year, we believed there was still some opportunity to allow a limited harvest last fall without compromising the population's ability to reach 500,000 canvasbacks this spring. Thus, we allowed a very restrictive, shortened canvasback season for 2001–02. In the Atlantic and Mississippi Flyways, the season length was 20 days, in the Central Flyway, 25 days, and in the Pacific Flyway, 38 days. Our objective was to provide some hunting opportunity while still maintaining the spring population above the 500,000 objective level.

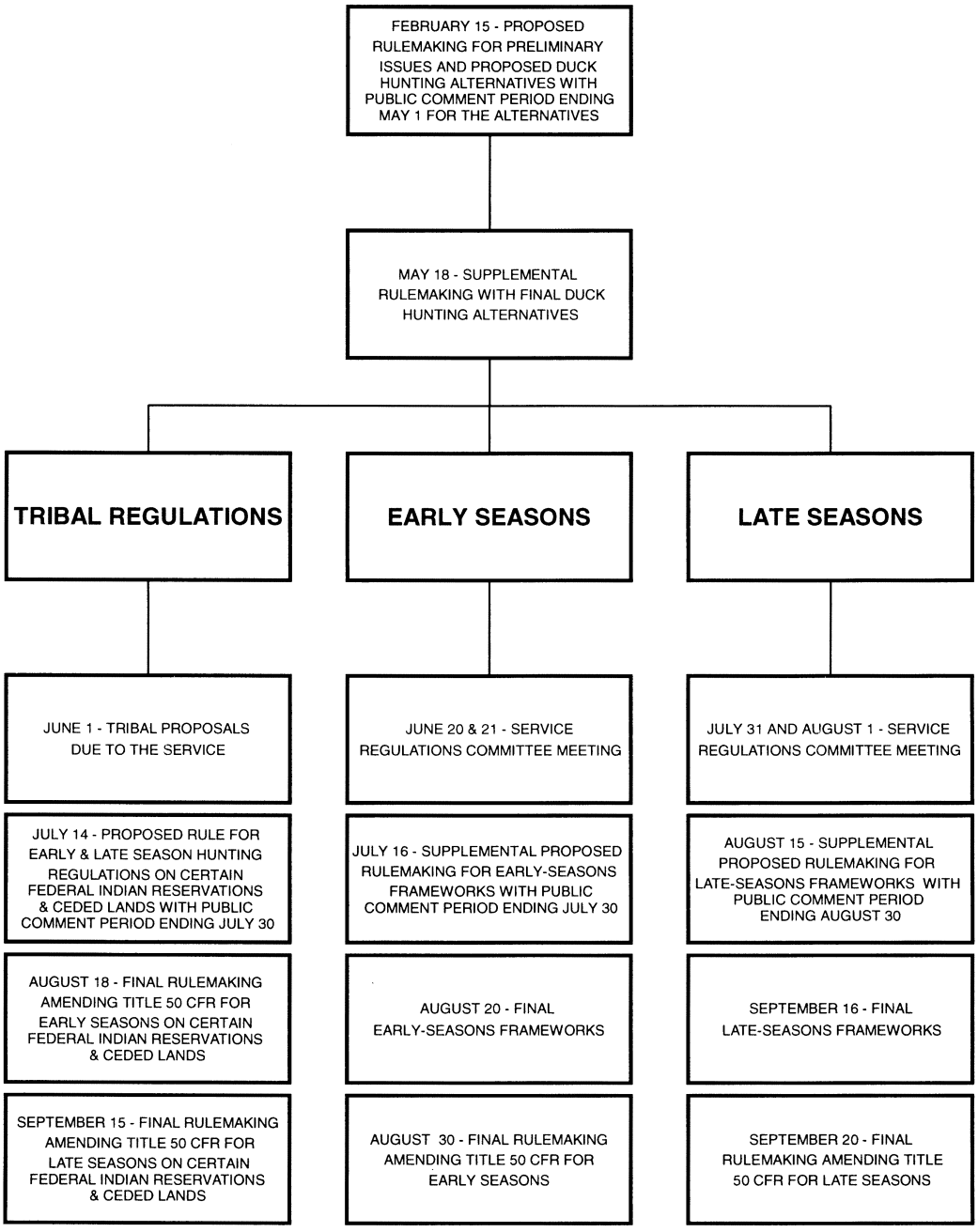
We also expressed a willingness to revisit the guidelines outlined in the strategy and asked that any proposed changes have broad-based support and reflect the interests of all stakeholders. In addition, we urged the Flyway Councils to begin internal discussions regarding species-specific restrictions in the existing AHM framework. In 2002, we will again consider the size of the spring population and model-based predictions of production and harvest in development of regulations proposals for canvasbacks. However, absent the broad-based support by the Flyway Councils to revise the strategy, we intend to follow the 1994 model-based prescriptions originally developed for canvasbacks.

v. Pintails

We presently utilize an interim strategy to manage the harvest of pintails. In the current strategy, the determination of appropriate bag limits is based, in part, on the harvest predicted by a set of models that were developed from historical data relating harvest to bag limit and season length. However, since the interim strategy was implemented in 1997, the predicted harvest has consistently been lower than the estimated harvest from the U.S. and Canadian Federal harvest surveys. We will work with the Flyway Councils to review the current method of determining bag limits with the intent of making appropriate adjustments to the strategy to better reflect the realized harvest of pintails.

BILLING CODE 4310–55–P

2002 SCHEDULE OF REGULATIONS MEETINGS AND FEDERAL REGISTER PUBLICATIONS



DATES SHOWN RELATIVE TO PUBLICATION OF FEDERAL REGISTER DOCUMENTS ARE TARGET DATES

PROPOSED REGULATORY ALTERNATIVES FOR DUCK HUNTING DURING THE 2002-03 SEASON

	ATLANTIC FLYWAY				MISSISSIPPI FLYWAY				CENTRAL FLYWAY (a)				PACIFIC FLYWAY (b)(c)			
	VERY RES	RES	MOD	LIB	VERY RES	RES	MOD	LIB	VERY RES	RES	MOD	LIB	VERY RES	RES	MOD	LIB
Beginning Shooting Time	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise
Ending Shooting Time	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset
Opening Date	Oct. 1	Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24
Closing Date	Jan. 20	Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.
Season Length (in days)	20	30	45	60	20	30	45	60	25	39	60	74	38	60	86	107
Daily Bag/ Possession Limit	3 6	3 6	6 12	6 12	3 6	3 6	6 12	6 12	3 6	3 6	6 12	6 12	4 8	4 8	7 14	7 14
Species/Sex Limits within the Overall Daily Bag Limit																
Mallard (Total/Female)	3/1	3/1	4/2	4/2	2/1	2/1	4/1	4/2	3/1	3/1	5/1	5/2	3/1	3/1	5/2	7/2
Pintail	<----ACCORDING TO THE PINTAIL INTERIM HARVEST STRATEGY---->															
Black Duck	1	1	1	1	1	1	1	1	-	-	-	-	-	-	-	-
Scaup (d)	<----TO BE DETERMINED BASED ON CURRENT SCAUP STATUS INFORMATION---->															
Canvasback	<----0 OR 1, ACCORDING TO THE CANVASBACK HARVEST STRATEGY---->															
Redhead	2	2	2	2	1	1	2	2	1	1	2	2	2	2	2	2
Wood Duck	2	2	2	2	2	2	2	2	2	2	2	2	-	-	-	-
Whistling Ducks	1	1	1	1	-	-	-	-	-	-	-	-	-	-	-	-
Harlequin	Closed	Closed	Closed	Closed	-	-	-	-	-	-	-	-	-	-	-	-
Mottled Duck	1	1	1	1	3	3	3	3	1	1	1	1	-	-	-	-

(a) In the High Plains Mallard Management Unit, all regulations would be the same as the remainder of the Central Flyway with the exception of season length. Additional days would be allowed under the various alternatives as follows: very restrictive - 8, restrictive - 12, moderate and liberal - 23. Under all alternatives, additional days must be on or after the Saturday nearest December 10.

(b) In the Columbia Basin Mallard Management Unit, all regulations would be the same as the remainder of the Pacific Flyway, with the exception of season length. Under all alternatives except the liberal alternative, an additional 7 days would be allowed.

(c) In Alaska, framework dates, bag limits, and season length would be different than the remainder of the Pacific Flyway. The bag limit would be 5-7 under the very restrictive and restrictive alternatives, and 8-10 under the moderate and liberal alternatives. There would be no restrictions on pintails, and canvasback limits would follow those for the remainder of the Pacific Flyway. Under all alternatives, season length would be 107 days and framework dates would be Sep 1 - Jan 26.

(d) Scaup daily bag limits will be based on current scaup status information until an agreed upon harvest strategy is completed and implemented.

[FR Doc. 02–6527 Filed 3–18–02; 8:45 am]
BILLING CODE 4310–55–C

Notices

Federal Register
Vol. 67, No. 53
Tuesday, March 19, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Food Stamp Program Store Applications, Form Numbers FNS–252 and FNS–252–2

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service (FNS) is publishing for public comment a summary of a proposed information collection. The proposed collection is a revision, with change of two application forms approved under the Office of Management and Budget (OMB) No. 0584–0008, Form FNS–252, Food Stamp Application for Stores and Form FNS–252–2, Meal Service '' Application. Together, these two forms are used by all retailers, wholesalers, meal service providers, certain types of group homes, shelters, and state-contracted restaurants who wish to apply to FNS for authorization to participate in the Food Stamp Program and are used to determine whether or not the firms or services continue to meet eligibility requirements. Previously, Form FNS–252R, Food Stamp Application for Stores—Reauthorization was approved under this same OMB Number. FNS has eliminated the need for Form FNS–252R and this submission to OMB reflects this change.

DATES: Comments on this notice must be received by May 20, 2002 to be assured of consideration.

ADDRESSES: Send comments to Karen J. Walker, Chief, Retailer Management Branch, Benefit Redemption Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 404, Alexandria, VA 22302.

Pursuant to the Paperwork reduction Act of 1995 (44 U.S.C. 3507), comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will become matter of public record.

FOR FURTHER INFORMATION CONTACT: Karen J. Walker, (703) 305–2418.

SUPPLEMENTARY INFORMATION:

Title: Food Stamp Program—Store Applications.

OMB Number: 0584–0008.

Expiration Date: June 30, 2002.

Type of Request: Revision of a currently approved information collection, with changes.

Abstract: FNS is the Federal Agency responsible for the Food Stamp Program (FSP). Section 9 of the Food Stamp Act of 1977, as amended, (7 U.S.C. 2011 et. seq.) requires that FNS provide for the submission of applications for approval by retail food establishments and meal service programs that wish to participate in the FSP, review the application in order to determine whether or not applicants meet eligibility requirements, and make determinations whether to grant or deny authorization to accept and redeem food stamp benefits. FNS is also responsible for requiring updates to application information and reviewing that information to determine whether or not the firms or services continue to meet eligibility requirements.

The following three forms are currently approved under OMB No. 0584–0008: Form FNS–252, Food Stamp Application for Stores; Form FNS–252–2, Meal Service-Application, and Form FNS–252–R, Food Stamp Application for Stores—Reauthorization. For this submission to OMB, FNS is seeking approval of two forms, FNS–252 and FNS–252–2. FNS has eliminated the use of the third form, FNS–252–R, so it is not part of this information collection package. Without the use of Forms FNS–252 and FNS–252–2, no vehicle would exist for FNS to determine the qualification of those applicants whose participation will effectuate the purposes of the FSP.

The burden associated with these forms are determined from information available in our Store Tracking and Redemption System (STARS) database based on information available as of July 2001. For burden estimates associated with the number of applications received and processed for initial authorization, we used as our base the number of stores (all types) newly authorized/approved as reflected in data in year-end data maintained in STARS. We examined year-end data for Fiscal Year (FY) 1996–2000. Year-end data for FY 2001 is not yet available. In our analysis, historical data reflected an average decline of approximately 1,500 authorized retailers each year. However, in comparing the number of new firms entering the FSP in July 2000 vs. July 2001, we noticed a slight increase in the number of authorizations. As of July 2001, approximately 15,069 firms were newly authorized/approved. We do not think it is realistic to assume that this number will remain constant for the remainder of the fiscal year, therefore, we are estimating a 10% increase from the STARS data available as of July 2001. We estimate that the number of stores newly authorized in FY 2001 will be around 16,576 (15,069 + 10% = 16,575.9), rounded to 16,500. We have further inflated the base number of 16,500 applications by 7% (1,155) to account for applications received and processed, but denied or are incomplete at the time of submission. Thus, the total number of applications expected to be received and processed is estimated to be 17,655 annually. It is estimated that 98% (17,301) of the 17,655 applications expected to be received would be on Form FNS–252 and 2% (353) would be on Form FNS–252–2. As currently approved by OMB, the hourly burden rate per response for Form FNS–252 is 20 to 68 minutes, with the

average being 27 minutes. Hourly burden time per response varies by the type of application used, and includes the time to review instructions, search existing data resources, gather and copy the data needed, complete and review the application and submit the form and documentation to FNS. The hourly burden time for users of Form FNS–252–2 is estimated to be 10 to 20 minutes, with the average time being 12 minutes.

For burden estimates associated with applications for *reauthorization,* we used the total number of stores (all types) authorized (155,950) as of July 2001. Generally, authorized stores are subject to reauthorization at least once every 5 years. Using the number of authorized stores (155,950) as of July 2001 as our base, it is estimated that 20% (31,190) of all authorized stores are subject to reauthorization performed annually. As mentioned previously, since our last information collection package, FNS has eliminated the use of Form FNS 252–R, Food Stamp Application for Stores—Reauthorization, and the hourly burden time associated with this form. As a result of this procedural change, we estimate that 3% (936) of the 31,190 firms subject to reauthorization will be completed using Form FNS–252 and 2% (624) will be on Form FNS–252–2. The remaining 95% (29,630) of the 31,190 firms subject to reauthorization will not have to complete any forms in order to be reauthorized. Reauthorization for those firms will involve a documented store visit either by Agency personnel or by an agent of the Agency.

Using the two remaining forms (FNS–252 and FNS 252–2), we estimate the number of program respondents to be 19,215. The computation is provided below:

FNS–252

New Authorizations 17,302 (17,655 x 98%); Reauthorizations 936 (155,950 x 20% x 3%) = 18,238

FNS–252–2

New Authorizations 353 (17,655 x 2%) Reauthorizations 624 (155,950 x 20% x 2%) = 977; Total Responses = 19,215 (18238 + 977).

We estimate the annual burden hours to be 8,553 hours. The computation is provided below:

FNS–252 8,358 (18,238 x .4583 hours)

FNS–252–2 *195*; Total Annual Hours 8,553.

Affected Public: Retail food stores, wholesale food concerns, and meal service programs.

Estimated Number of Respondents: 19,215.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Responses: 19,215.

Estimate of Burden: 8,553.

Estimated Total Annual Burden: 8,553.

Dated: February 5, 2002.

George A. Braley,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 02–6589 Filed 3–18–02; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request; Waivers Under Section 6(o) of the Food Stamp Act

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collections. Section 6(o) of the Food Stamp Act of 1977, as amended by Section 824 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, establishes a time limit for the receipt of food stamp benefits for certain able-bodied adults who are not working. The provision authorizes the Secretary of Agriculture, upon a State agency's request, to waive the provision for any group of individuals if the Secretary determines ''that the area in which the individuals reside has an unemployment rate of over 10 percent, or does not have a sufficient number of jobs to provide employment for the individuals.'' As required in the statute, in order to receive a waiver the State agency must submit sufficient supporting information so that the United States Department of Agriculture (USDA) can make the required determination as to the area's unemployment rate or sufficiency of available jobs. This collection of information is therefore necessary in order to obtain waivers of the food stamp time limit.

DATES: Written comments must be received on or before May 20, 2002.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Patrick Waldron, Chief, Certification Policy Branch, Program Development Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302. Comments may also be faxed to the attention of Mr. Waldron at (703) 305–2486. The Internet address is: Patrick.Waldron@FNS.USDA.GOV. All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, 22302, Room 812.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Mr. Waldron at (703) 305–2495.

SUPPLEMENTARY INFORMATION:

Title: Waiver Guidance for Food Stamp Time Limits.

OMB Number: 0584–0479.

Form Number: Not a form.

Expiration Date: 2/28/02.

Type of Request: Reinstatement with a change of a previously approved collection for which approval has expired.

Abstract: Section 824 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L.104–193, 110 Stat. 2323 amended Section 6(o) of the Food Stamp Act of 1977 (7 U.S.C. 2015(o)) to establish a time limit for the receipt of food stamp benefits for certain able-bodied adults who are not working. The provision authorizes the Secretary of Agriculture, upon a State agency's request, to waive the provision for any group of individuals if the Secretary determines ''that the area in which the individuals reside has an unemployment rate of over 10 percent; or (ii) does not have a sufficient number of jobs to provide employment for the individuals.'' As

required in the statute, in order to receive a waiver the State agency must submit sufficient supporting information so that USDA can make the required determination as to the area's unemployment rate or sufficiency of available jobs. This collection of information is therefore necessary in order to obtain waivers of the food stamp time limit. During the last three years, the Food and Nutrition Service (FNS) has received on average 74 requests for waivers from an average of 40 State agencies. Each request submitted by a State agency to exempt individuals residing in specified areas is considered by FNS to be a separate request, since the requested exemptions may be based on different criteria, are submitted at different times, and require separate analysis. For the above reasons a significant number of State agencies may submit multiple requests. Since these waivers must be renewed on an annual basis and new ones may be submitted to reflect changing labor market conditions, FNS anticipates receipt of approximately the same number of waiver requests every year.

Affected Public: State and Local governments.

Estimated Number of Respondents: 40.

Estimated Number of Responses: 74.

Estimated Number of Responses per Respondent: 1.85.

Estimated Time per Response: 20 hours.

Estimated Total Burden: 1480 hours.

Dated: March 4, 2002.

George Braley,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 02–6590 Filed 3–18–02; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Forest Service

Lake County Resource Advisory Committee (RAC); Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake County Resource Advisory Committee (RAC) will hold a meeting.

DATES: The meeting will be held on March 25, 2002, from 3:00 p.m. to 6:00 p.m.

ADDRESSES: The meeting will be held at the Lake County Board of Supervisor's Chambers at 255 North Forbes Street, Lakeport.

FOR FURTHER INFORMATION CONTACT: Debbie McIntosh, Committee Coordinator, USDA, Mendocino National Forest, Upper Lake Ranger District, 10025 Elk Mountain Road, Upper Lake, CA 95485. (707) 275–2361; e-mail *dmcintosh@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Review and approval of the minutes of the February meeting; (2) apply Criteria to Submitted Proposals; (3) Select Projects that best meet the Evaluation Criteria; (4) Recommend Projects; and (5) Public Comment period. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: March 11, 2002.

Blaine P. Baker,

Designated Federal Officer.

[FR Doc. 02–6579 Filed 3–18–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will hold its third meeting.

DATES: The meeting will be held on April 11, 2002, and will begin at 9:00 a.m. and end at approximately 12:00 p.m.

ADDRESSES: The meeting will be held at the Lincoln Street School, PDC Room, 1135 Lincoln Street, Red Bluff, CA.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–5329; EMAIL *ggaddini@fs.fed.us*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) By-laws, (2) Project Selection Criteria. (3) List Projects by Category. (4) How to Apply Criteria to Projects, (5) Watershed and Roads, (6) Public Comment. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: March 13, 2002.

Michael Brenner,

Acting Forest Supervisor.

[FR Doc. 02–6588 Filed 3–18–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Library

Notice of Intent to Seek Approval to Collect Information

AGENCY: Agricultural Research Service, National Agricultural Library, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Library's intent to request approval for a new information collection relating to existing nutrition education and training materials targeting low-income persons. This voluntary form would give Food Stamp nutrition education providers the opportunity to share resources that they have developed or used.

DATES: Comments on this notice must be received by May 23, 2002, to be assured of consideration.

ADDRESSES: Address all comments concerning this notice to Alicie H. White, Technical Information Specialist, Food and Nutrition Information Center, National Agricultural Library, 10301 Baltimore Avenue, Beltsville, MD, 20705–2351, Comments may be sent by facsimile to (301) 504–6053, or fax (301) 504–6409.

Submit electronic comments to *awhite@nal.usda.gov*

FOR FURTHER INFORMATION CONTACT: Alice H. White, (301) 504–6053.

SUPPLEMENTARY INFORMATION:

Title: Food Stamp Nutrition Connection Resource Sharing Form.

OMB Number: Not yet assigned.

Expiration Date: N/A.

Type of Request: Approval for new data collection from Food Stamp nutrition education providers.

Abstract: This voluntary ''Sharing Form'' would give Food Stamp nutrition education providers the opportunity to share information about resources that they have developed or used. Data collected using this form will help the Food and Nutrition Information Center (FNIC) identify existing nutrition education and training resources for review and inclusion in an online database. Educators can then search this database via the Food Stamp Nutrition Connection web site < *http://www.nal.usda.gov/fnic/foodstamp/*> . In 2001, the United States Department of Agriculture's (USDA) Food and Nutrition Service established the Food

Stamp Nutrition Connection to improve access to Food Stamp Program nutrition resources. Educators nationwide can use this site to identify curricula, lesson plans, research, training tools and participant materials. Developed and maintained at the National Agricultural Library's FNIC, this resource system helps educators find the tools and information they need to provide quality nutrition education for low-income audiences.

The Sharing Form will be available for completion online at the Food Stamp Nutrition Connection web site. Individuals may also print the form and return it via fax or mail. The form consists of four parts. These various sections include: Part 1 consisting of three questions about the responder; Part 2 with nine questions about the resource; Part 3 with five questions about resource development; and Part 4 with six questions about ordering/obtaining the resource. Responders are asked to complete only relevant sections of the form. Instructions about which sections to complete, based on one's relationship to the resource, are provided in Part 1. For instance, those that use resource but are neither it's developer nor distributor would only complete Parts 1 and 2.

This form will enable FNIC to inform nutrition educators of existing nutrition education and training materials targeting low-income Americans. This identification of existing materials will help educators spend their monies wisely in the development of needed educational resources.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.7 minutes per response.

Respondents: Food Stamp nutrition education providers.

Estimated Number of Respondents: 50 per year.

Estimated Total Annual Burden on Respondents: 16 hrs.

Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and the assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who respond, including the use of appropriate automated, electronic, mechanical, or other technology. Comments should be sent to the address in the preamble. All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

Dated: February 18, 2002.

Caird E. Rexroad,

Acting Associate Administrator.

[FR Doc. 02–6591 Filed 3–18–02; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section III of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Washington State

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in Section III of the FOTG. NRCS is also seeking review and comments to proposed changes.

SUMMARY: It is the intention of NRCS in Washington State to issue new and revised resource management system (RMS) quality criteria. Quality criteria identify the minimum level of treatment necessary to achieve a resource management system. Quality criteria are established that will protect soil, water, air, plant, and animal resources. These quality criteria are applicable to all land uses and to various operating units.

DATES: Comments will be received for a period of 30 days following the publication date of this notice.

FOR FURTHER INFORMATION CONTACT: Raymond L. Hughbanks, State Conservationist, Natural Resources Conservation Service, 316 W. Boone Avenue, Suite 450, Spokane, Washington 99201–2348. Phone: 509–323–2900. Fax: 509–323–2909. Copies of these standards will be made available upon written request. You may submit your electronic requests and comments to: *Marty.seamons@wa.usda.gov*

Dated: February 14, 2002.

Frank R. Easter,

Acting State Conservationist.

[FR Doc. 02–6605 Filed 3–18–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Submission for OMB Review: Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance of the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Agency: International Trade Administration (ITA).

Title: Trade Fair Certification Program: Application.

Agency Form Number: ITA–4100P.

OMB Approval Number: 0625–0130.

Type of Request: Regular submission.

Burden Hours: 900.

Number of Respondents: 90.

Average Hours Per Response: 10.

Needs and Uses: Private trade show organizers, trade associations, U.S. agents of foreign fair authorities, and other entities use this form to apply for certification of their ability to organize and manage a U.S. pavilion at a foreign trade show. The Department of Commerce uses information from the form to evaluate if both the show and the organizer meet the Department's high standards in areas such as recruiting, delivering show services, attracting small and medium size firms, booth pricing, and an appropriate marketing venue for U.S. firms. The form asks organizers to respond to 23 questions ranging from simple name and address to pricing options to outlining their experience and marketing plans. Potential exhibitors look to trade fair certification to ensure they are participating in a viable show with a reliable organizer. The form also includes information on where to apply, procedures, and commitment by the applicant to abide by the terms set forth for program participation.

Affected Public: Business or other for profit organizations, and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit; voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th & Constitution Avenue, NW, Washington, DC 20230 or via the Internet at *Mclayton@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent to

David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: March 13, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–6518 Filed 3–18–02; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Submission for OMB Review: Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance of the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Agency: International Trade Administration (ITA).

Title: Certified Trade Mission: Application for Status.

Agency Form Number: ITA–4127P.

OMB Approval Number: 0625–0215.

Type of Request: Regular submission.

Burden Hours: 60.

Number of Respondents: 60.

Average Hours Per Response: 1.

Needs and Uses: Certified Trade Missions are overseas events that are planned, organized and led by both Federal and non-Federal government export promotion agencies such as industry trade associations, agencies of state and local governments, chambers of commerce, regional groups and other export-oriented groups. The Certified Trade Mission-Application for Status form is the vehicle by which individual firms apply, and if accepted, agree to participate in the Department of Commerce's trade promotion events program, identify the products or services they intend to sell or promote, and record their required participation fees. This submission only renews use of the form; no changes are being made. The form is used to (1) collect information about the products/services that a company wishes to export; (2) evaluate applicants' mission goals and the marketability of product categories/industry in the local market, and (3) to develop meeting schedules appropriate to these.

Affected Public: Business or other for profit organizations, and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit; voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th & Constitution Avenue, NW, Washington, DC 20230 or via the Internet at *Mclayton@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: March 13, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–6519 Filed 3–18–02; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance of the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Agency: International Trade Administration (ITA).

Title: Marketing Data Form.

Agency Form Number: ITA–466P.

OMB Approval Number: 0625–0047.

Type of Request: Regular submission.

Burden Hours: 3,000.

Number of Respondents: 4,000.

Average Hours Per Response: 45 minutes.

Needs and Uses: There is a need to have proper information about companies participating in U.S. exhibitions, trade missions and Matchmaker Trade Delegations and their products in order to publicize and promote participation in these trade promotion events. The Marketing Data Form (MDF) provides information necessary to produce export promotion brochures and directories, to arrange appointments and to prospect calls on behalf of the participants with key prospective buyers, agents, distributors or government officials. Specific information is also requested relating to the participants' objectives regarding agents, distributors, joint venture or licensing partners, and any special requirements for prospective agents, for example, physical facilities, technical capabilities, financial strength, staff, representation of complementary lines, etc.

Affected Public: Business or other for profit organizations, and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit; voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th & Constitution Avenue, NW, Washington, DC 20230 or via the Internet at *MClayton@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: March 13, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–6520 Filed 3–18–02; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance of the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Agency: International Trade Administration (ITA).

Title: Mission/Exhibition Evaluation.

Agency Form Number: ITA–4075P.

OMB Approval Number: 0625–0034.

Type of Request: Regular submission.

Burden Hours: 167.

Number of Respondents: 2,000.

Average Hours Per Response: 5 minutes.

Needs and Uses: The U.S. Department of Commerce (DOC) and DOC-certified trade missions and exhibitions are overseas events planned, organized and led by government and non-government export promotion agencies such as industry trade associations, agencies of federal, state and local governments; chambers of commerce; regional consortia; and other export oriented groups. This form is used to: (1) Evaluate the effectiveness of DOC or

DOC-certified overseas trade events through the collection of information relating to required performance measures; (2) document the results of participation in DOC trade events; (3) evaluate results reported by small to mid-sized, new-to-exports/new-to-market U.S. companies; (4) document the successful completion of trade promotion activities conducted by overseas DOC offices; and (5) identify strengths and weaknesses of DOC trade promotion programs in the interest of improving service to the U.S. business community. This request is being submitted to extend OMB authority for this information collection form to enable participants to continue to address whether or not their overall objective(s) were met by participating in a particular trade mission or exhibition.

Affected Public: Business or other for profit organizations, not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th & Constitution Avenue, NW., Washington, DC 20230 or via the Internet at *MClayton@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: March 13, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–6521 Filed 3–18–02; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Submission for OMB Review: Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance of the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Agency: International Trade Administration (ITA).

Title: Product Characteristics—Design Check-Off Lists.

Agency Form Number: ITA–426P.

OMB Approval Number: 0625–0035.

Type of Request: Regular submission.

Burden Hours: 1,000.

Number of Respondents: 2,000.

Average Hours Per Response: 30 minutes.

Needs and Uses: The International Trade Administration (ITA) sponsors up to 120 overseas trade fairs each fiscal year. Trade fairs involve U.S. firms exhibiting their goods and services at American pavilions at internationally recognized events worldwide. The Product Characteristics-Design Check-Off List seeks from participating firms information on the physical nature, power (utility) and graphic requirements of the products and services to be displayed, and to ensure the availability of utilities for active product demonstrations. This form also allows U.S. firms to identify special installation instructions that can be critical to the proper placement and hookup of their equipment and/or graphics. Without the timely and accurate submission of Form ITA–426P, Product Characteristics-Design Check-Off List, ITA would be unable to provide a pavilion facility that would effectively support the sales/marketing and presentation objectives of U.S. participants. The anticipated result would be diminished program productivity, then declining participation by U.S. firms. A second possible result would be reduced private sector funds and possibly the discontinuation of this type of U.S. international trade event program.

Affected Public: Business or other for profit organizations, and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Voluntary; required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th and Constitution, NW, Washington, DC 20230 or via the Internet at *MClayton@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: March 13, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–6522 Filed 3–18–02; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Current Population Survey, June 2002 Fertility Supplement.

Form Number(s): None (The CPS is conducted by interviewers using laptop computers and an automated survey instrument).

OMB Approval Number: 0607–0610.

Type of Review: Regular submission.

Burden Hours: 250.

Number of Respondents: 30,000.

Average Hours Per Response: 30 seconds.

Needs and Uses: The Census Bureau is requesting clearance for the collection of data concerning the Fertility Supplement to be conducted in conjunction with the June 2002 Current Population Survey (CPS). The Census Bureau sponsors the supplement questions, which were previously collected in June 2000, and have been asked periodically since 1971.

This survey provides information used mainly by government and private analysts to project future population growth, to analyze child spacing, and to aid policymakers in their decisions affected by changes in family size and composition. Past studies have documented profound changes to historical patterns that have occurred in fertility rates, family structures, premarital births, and the timing of the first birth. Potential needs for government assistance, such as aid to families with dependent children, child care, and maternal health care for single-parent households, can be estimated using CPS characteristics matched with fertility data.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., section 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *mclayton@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503.

Dated: March 14, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–6611 Filed 3–18–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Survey of Income and Program Participation (SIPP) Wave 6 of the 2001 Panel

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 20, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *MClayton@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Judith H. Eargle, Census Bureau, FOB 3, Room 3387, Washington, DC 20233–0001, (301) 457–3819.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the SIPP which is a household-based survey designed as a continuous series of national panels. New panels are introduced every few years with each panel usually having durations of one to four years. Respondents are interviewed at 4-month intervals or ''waves'' over the life of the panel. The survey is molded around a central ''core'' of labor force and income questions that remain fixed throughout the life of the panel. The core is supplemented with questions designed to address specific needs, such as obtaining information about assets and liabilities, as well as expenses related to work, health care, and child support. These supplemental questions are included with the core and are referred to as ''topical modules.''

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single, unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic-policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided this type of data on a continuing basis since 1983 permitting levels of economic well-being and changes in these levels to be measured over time.

The 2001 Panel is currently scheduled for three years and will include nine waves of interviewing beginning February 2001. Approximately 50,000 households will be selected for the 2001 Panel, of which 37,500 are expected to be interviewed. We estimate that each household will contain 2.1 people, yielding 78,750 interviews in Wave 1 and subsequent waves. Interviews take 30 minutes on average. Three waves of interviewing will occur in the 2001 SIPP Panel during FY 2003. The total annual burden for the 2001 Panel SIPP interviews would be 118,125 hours in FY 2003.

The topical modules for the 2001 Panel Wave 6 collect information about:

- Medical Expenses and Utilization of Health Care (Adults and Children)
- Work Related Expenses and Child Support Paid
- Assets, Liabilities, and Eligibility

Wave 6 interviews will be conducted from October 2002 through January 2003. A 10-minute re-interview of 2,500 people is conducted at each wave to ensure accuracy of responses. Re-interviews would require an additional 1,253 burden hours in FY 2003.

An additional 1,050 burden hours is requested in order to continue the SIPP Methods Panel testing. The test targets SIPP items and sections that require thorough and rigorous testing in order to improve the quality of core data.

II. Method of Collection

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every few years with each panel having durations of one to four years. All household members 15 years old or over are interviewed using regular proxy-respondent rules. During the 2001 Panel, respondents are interviewed a total of nine times (nine waves) at 4-month intervals making the SIPP a longitudinal survey. Sample people (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP primary sampling unit will be followed and interviewed at their new address. Individuals 15 years old or over who enter the household after Wave 1 will be interviewed; however, if these individuals move, they are not followed unless they happen to move along with a Wave 1 sample individual.

III. Data

OMB Number: 0607–0875.

Form Number: SIPP/CAPI Automated Instrument.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: 78,750 people per wave.

Estimated Time Per Response: 30 minutes.

Estimated Total Annual Burden Hours: 120,428.

Estimated Total Annual Cost to the Public: $0.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques

or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for the Office of Management and Budget approval of this information collection. They also will become a matter of public record.

Dated: March 13, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–6517 Filed 3–18–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee of Professional Associations; Meeting

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463 as amended by Pub. L. 94–409), the Bureau of the Census (Census Bureau) is giving notice of a meeting of the Census Advisory Committee of Professional Associations. The Committee is composed of 36 members appointed by the Presidents of the American Economic Association, the American Statistical Association, the Population Association of America, and the Chairperson of the Board of the American Marketing Association. The Committee advises the Acting Director, Census Bureau, on the full range of Census Bureau programs and activities in relation to its areas of expertise.

DATES: The meeting will convene on April 18–19, 2002. On April 18, the meeting will begin at 8:30 a.m. and adjourn at 5:15 p.m. On April 19, the meeting will begin at 9 a.m. and adjourn at 12:15 p.m.

ADDRESSES: The meeting will take place at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Maxine Anderson-Brown, Chief, Conference and Travel Management Services Branch, Department of Commerce, U.S. Census Bureau, Room 1647, Federal Building 3, Washington, DC 20233. Her phone number is (301) 457–2308, TDD (301) 457–2540.

SUPPLEMENTARY INFORMATION: The agenda for the meeting on April 18, which will begin at 8:30 a.m. and adjourn at 5:15 p.m., is as follows:

- Introductory Remarks by the Acting Director and the Principal Associate Director for Programs, U.S. Census Bureau
- Census Bureau Responses to Committee Recommendations
- 2010 Census Update
- Within and Between Changes in Human Capital, Technology, and Productivity
- Creating Brand Awareness: What We Do the Other Nine Years
- Data Availability in the Research Data Centers
- Census 2000 Product Evaluation Update
- Coverage of Population in Census 2000: Results from Demographic Analysis
- Computer Security Survey: Status on Questionnaire Development Efforts to Measure the Nature of Computer-Related Crime
- Marketing Foreign Trade Statistics
- Language Guidelines for Survey Methods
- Overview of FY 2003 Economic Program Budget Initiatives
- Census Bureau Centennial Celebration
- Survey of Income and Program Participation Methods Panel
- The Use of Meditate to Support the 2002 Economic Census
- North American Product Classification System: What's Been Done, What's Being Done, What's Next

The agenda for the meeting on April 19, which will begin at 9 a.m. and adjourn at 12:15 p.m., is as follows:

- Chief Economist Update
- Marketing in the Federal Sector: Developing the Culture and Core Competencies
- Administrative Records Applications for Master Address File Improvements

The meeting is open to the public, and a brief period is set aside during the closing session for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Chief, Conference and Travel Management Services Branch, at least three days before the meeting. Seating is available to the public on a first-come, first-served basis. Individuals wishing additional information or minutes regarding this meeting may contact the Chief, Conference and Travel Management Services Branch as well. Her address and phone number are identified under this notice's **FOR FURTHER INFORMATION CONTACT** heading.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should also be directed to the Chief, Conference and Travel Management Services Branch.

Dated: March 13, 2002.

William G. Barron, Jr.,

Acting Director, Bureau of the Census.

[FR Doc. 02–6580 Filed 3–18–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–802]

Gray Portland Cement and Clinker From Mexico; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On September 13, 2001, the Department of Commerce published the preliminary results of administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. On January 15, 2002, the Department published a notice of extension of final results. The review covers one manufacturer/exporter, CEMEX, S.A. de C.V., and its affiliate, GCC Cemento, S.A. de C.V. The period of review is August 1, 1999, through July 31, 2000.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin is listed below in the ''Final Results of Review'' section of this notice.

EFFECTIVE DATE: March 19, 2002.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Mark Ross, Office of AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3477 or (202) 482–4794, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (the Act), by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations to 19 CFR part 351 (April 2000).

Background

On September 13, 2001, the Department published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. See *Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review: Gray Portland Cement and Clinker From Mexico*, 66 FR 47632 (September 13, 2001) (*Preliminary Results*). On January 15, 2002, the Department published a notice of extension of final results. See *Gray Portland Cement and Clinker from Mexico; Notice of Extension of Final Results of Antidumping Duty Administrative Review*, 67 FR 1962 (January 15, 2002).

We invited parties to comment on our Preliminary Results. In October 2001, we received case and rebuttal briefs from the petitioner, the Southern Tier Cement Committee, and from the respondents, CEMEX, S.A. de C.V. (CEMEX), and GCC Cemento, S.A. de C.V. (GCCC). The Department has conducted this administrative review in accordance with section 751(a) of the Act.

Scope of Review

The products covered by this review include gray portland cement and clinker. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material product produced when manufacturing cement, has no use other than being ground into finished cement. Gray portland cement is currently classifiable under Harmonized Tariff Schedule (HTS) item number 2523.29 and cement clinker is currently classifiable under HTS item number 2523.10. Gray portland cement has also been entered under HTS item number 2523.90 as ''other hydraulic cements.'' The HTS subheadings are provided for convenience and customs purposes only. The Department's written description remains dispositive as to the scope of the product coverage.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review, and to which we have responded, are listed in the Appendix to this notice and addressed in the Decision Memorandum, which is adopted by this notice. The Decision Memorandum is on file in Import Administration's Central Records Unit, Room B–099 of the main Department of Commerce Building. In addition, a complete version of the Decision Memorandum can be accessed directly from the Internet at *http://ia.ita.doc.gov*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have corrected certain programming and clerical errors in our preliminary results, where applicable. These changes are discussed in the relevant sections of the Decision Memorandum.

Final Results of Review

We determine that the weighted-average margin for the collapsed parties, CEMEX and GCCC, for the period August 1, 1999, through July 31, 2000 is 50.98 percent.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated an exporter/importer-specific assessment value. Because we found that the respondents had constructed export price (CEP) sales, we divided the total dumping margin for the reviewed sales by the total entered value of those reviewed sales. We will direct the Customs Service to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of the collapsed entity's importers' entries under the relevant order during the review period (see 19 CFR 351.212(a)).

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Cash Deposit Requirements

The following deposit requirements shall be effective upon publication of this notice of final results of administrative review for all shipments of gray portland cement and clinker from Mexico, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for CEMEX/GCCC will be 50.98 percent; (2) for previously investigated or reviewed companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this or any previous reviews or the original less-than-fair-value (LTFV) investigation but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 61.85 percent, which was the ''all others'' rate in the LTFV investigation. See *Final Determination of Sales at Less Than Fair Value: Gray Portland Cement and Clinker from Mexico*, 55 FR 29244 (July 18, 1990). The deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: March 12, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix—Issues in the Decision Memorandum

1. Adverse Facts Available
2. Regional Assessment
3. Revocation
4. Bag vs. Bulk
5. Sales-Below-Cost Test
6. Arm's-Length Test
7. Model Match
8. Financing Cash Deposits
9. Cash-Deposit Methodology
10. Packing Expenses
11. Export-Price Sales
12. Unit Conversions
13. Early-Payment Discounts
14. Arm's-Length Test

[FR Doc. 02–6600 Filed 3–18–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–825]

Oil Country Tubular Goods, Other Than Drill Pipe From Korea: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: On September 10, 2001, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on oil country tubular goods, other than drill pipe (OCTG) from Korea. *See Oil Country Tubular Goods From Korea: Preliminary Results of Antidumping Duty Administrative Review*, 66 FR 46999 (September 10, 2001) (Preliminary Results). This review covers one manufacturer/exporter of OCTG, SeAH Steel Corporation (''SeAH''), and the period August 1, 1999 through July 31, 2000. We gave interested parties an opportunity to comment on our preliminary results. As a result of these comments, we have made certain changes in these final results. These changes are discussed in the section on ''Interested Party Comments'' below.

EFFECTIVE DATE: March 19, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas Gilgunn at (202) 482–4236 or Scott Lindsay at (202) 482–0780, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations are to the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2000).

Background

On August 11, 1995, the Department published in the **Federal Register** an antidumping duty order on oil country tubular goods, other than drill pipe, (OCTG) from Korea (60 FR 41057). On August 31, 2000, the Department received a timely request from SeAH to conduct an administrative review pursuant to section 351.213(b)(2) of the Department's regulations. We published a notice of initiation of this antidumping duty administrative review on OCTG on October 2, 2000 (65 FR 58733).

The Department determined it was not practicable to complete the review within the standard time frame, and extended the deadline for completion of the preliminary results for this antidumping duty administrative review. *See Oil Country Tubular Goods from Korea: Extension of Time Limit for Preliminary Results of Antidumping Administrative Review*, 66 FR 23232 (May 8, 2001). On September 10, 2001, the Department published the preliminary results of this administrative review.

The Department subsequently determined that it was not practicable to complete the review within the initial time limits mandated by section 751(a)(3)(A) of the Act and extended the deadline for completion of the final results for this antidumping duty administrative review. *See Notice of Extension of Time Limit for Final Results of Administrative Antidumping Review: Oil Country Tubular Goods, Other Than Drill Pipe, From Korea*, 66 FR 66402, (December 26, 2001).

Scope of Review

The products covered by this order are oil country tubular goods (''OCTG''), hollow steel products of circular cross-section, including only oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (''API'') or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing or tubing pipe containing 10.5 percent or more of chromium, or drill pipe. The products subject to this order are currently classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.30.10, 7304.29.30.20, 7304.29.30.30, 7304.29.30.40, 7304.29.30.50, 7304.29.30.60, 7304.29.30.80, 7304.29.40.10, 7304.29.40.20, 7304.29.40.30, 7304.29.40.40, 7304.29.40.50, 7304.29.40.60, 7304.29.40.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.60.15, 7304.29.60.30, 7304.29.60.45, 7304.29.60.60, 7304.29.60.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50. The HTSUS item numbers are provided for convenience and Customs purposes. The written description remains dispositive of the scope of this review.

Period of Review

This review covers the period August 1, 1999 through July 31, 2000.

Analysis of Comments Received

All issues raised in the briefs filed by parties to this administrative review are addressed in the *Memorandum from Joseph A. Spetrini, Deputy Assistant Secretary for AD/CVD Enforcement Group III, to Faryar Shirzad, Assistant Secretary for Import Administration: Issues and Decision Memo for the Final Results of the Antidumping Adminstrative Review of Oil Country Tubular Goods, Other Than Drill Pipe From Korea*, dated March 11, 2002 (*Decision Memo*), which is hereby adopted by this notice.

A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision Memo*, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099 of the main Commerce Building. In addition, a complete version of the *Decision Memo* can be accessed directly on the Internet at *http://ia.ita.doc.gov*. The paper copy and electronic version of the *Decision Memo* are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made changes to the margin calculation.

We modified our margin calculation so that we no longer deduct both freight revenue (FRTREVU) and inland freight from the warehouse to the customer expense (INLFWCU) from total gross unit price (TGRSUPRU). Instead we added FRTREVU to GRSUPRU to calculate TGRSUPRU and then deducted INLFWCU as part of U.S. movement expenses. However, we also modified our margin calculation so that TGRSUPRU does not include FRTREVU for sales for which SeAH did not report a corresponding INLFWCU.

Final Results of Review

We determine that the following weighted-average margin exists for the

period August 1, 1999 through July 31, 2000:

Manufacturer/exporter	Margin (percent)
SeAH Steel Corporation	1.56

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated importer-specific *ad valorem* assessment rates for SeAH based on entered values. We will direct the Customs Service to assess the *ad valorem* assessment rate against the entered customs value for each entry of subject merchandise from SeAH during the review period. For customs purposes only, this case is identified using case number A–580–215.

Cash Deposit Requirements

The following deposit requirements shall be effective for all shipments of the subject merchandise from Korea that are entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for SeAH Steel Corporation will be the rate established above in the ''Final Results of Review'' section; (2) for previously investigated or reviewed companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters of this merchandise will continue to be 12.17 percent, the all others rate made effective by the less-than-fair-value investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 351.213 and 19 CFR 351.221(b)(5).

Dated: March 11, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix

List of Issues

1. Freight Revenue and U.S. Price
2. Constructed Export Price Selling Expenses in Korea
3. Date of Sale for SeAH's Third Country Sales
4. SeAH's G&A and Interest Expense
5. SeAH's Warranty Expenses

[FR Doc. 02–6599 Filed 3–18–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–804]

Certain Preserved Mushrooms from Chile: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of antidumping duty administrative review for the period of December 1, 2000, through November 30, 2001.

EFFECTIVE DATE: March 19, 2002.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Sophie Castro, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–0588, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's regulations are to 19 CFR part 351 (2001).

Background

On December 3, 2001, the Department published in the **Federal Register** (66 FR 60183) a notice of ''Opportunity To Request Administrative Review'' of the antidumping duty order on certain preserved mushrooms from Chile for the period December 1, 2000, through November 30, 2001. On December 28, 2001, the Department received a timely request from the petitioner [1] that we conduct an administrative review of the above-referenced antidumping duty order for the period December 1, 2000, through November 30, 2001, for the following companies: Nature's Farm Products (Chile) S.A., Ravine Foods and Compania Envasadora del Atlanitco. On January 29, 2002, the Department published a notice of initiation of an administrative review of the antidumping duty order on certain preserved mushrooms from Chile with respect to these companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 67 FR 4236.

Rescission of Review

On February 27, 2002, the petitioner timely withdrew its request for an administrative review of these companies' sales during the above-referenced period. Section 351.213(d)(1) of the Department's regulations stipulates that the Secretary may permit a party that requests a review to withdraw the request within 90 days of the date of publication of notice of initiation of the requested review. In this case, the petitioner withdrew its request for review within the 90-day period. We have received no other submissions regarding the petitioner's withdrawal of its request for review. Therefore, we are rescinding this review of the antidumping duty order on certain preserved mushrooms from Chile for the period of December 1, 2000, through November 30, 2001. This notice is published in accordance with section 751 of the Act and 19 CFR 351.213(d)(4).

[1] The petitioner is the Coalition for Fair Preserved Mushroom Trade which includes the American Mushroom Institute and the following domestic companies: L.K. Bowman, Inc., Modern Mushroom Farms, Inc., Monterey Mushrooms, Inc., Mount Laurel Canning Corp., Mushroom Canning Company, Southwood Farms, Sunny Dell Foods, Inc., and United Canning Corp.

Dated: March 13, 2002.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–6602 Filed 3–18–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–814]

Notice of Amended Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative review of stainless steel sheet and strip in coils from France.

EFFECTIVE DATE: March 19, 2002.

FOR FURTHER INFORMATION CONTACT: Robert Bolling, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3434.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2001).

Scope of the Review

For purposes of this administrative review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is currently classifiable in the *Harmonized Tariff Schedule of the United States* (''HTS'') at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81 [1], 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the review of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, ''Additional U.S. Note'' 1(d).

Flapper valve steel is also excluded from the scope of the order. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and

[1] Due to changes to the HTS numbers in 2001, 7219.13.0030, 7219.13.0050, 7219.13.0070, and 7219.13.0080 are now 7219.13.0031, 7219.13.0051, 7219.13.0071, and 7219.13.0081, respectively.

12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [2]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [3]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.'' [4]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.,* carpet knives).[5] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''.[6]

[2] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[3] ''Gilphy 36'' is a trademark of Imphy, S.A.

[4] ''Durphynox 17'' is a trademark of Imphy, S.A.

[5] This list of uses is illustrative and provided for descriptive purposes only.

[6] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

Amendment of Final Results

On February 12, 2002, the Department of Commerce (''the Department'') issued its final results for stainless steel sheet and strip in coils from France for the January 4, 1999 through June 30, 2000 period of review. *See Stainless Steel Sheet and Strip From France; Final Results of Antidumping Duty Administrative Review* (''*Final Results*''), 67 FR 6493 (February 12, 2002).

On February 12, 2002, respondent Ugine, S.A. (''Ugine'') timely filed an allegation that the Department made ministerial errors in the final results, pursuant to 19 CFR 351.224(c). Petitioners did not submit any comments in reply to this ministerial error allegation.

Ugine's Allegation of Ministerial Errors by the Department

Ugine contends that the Department, in its *Final Results,* inadvertently used the wrong indirect expenses to calculate the commission offset. Specifically, the offset was calculated using the amount of indirect selling expenses in the United States incurred in connection with the matched U.S. sales. According to Ugine, this results in double-counting of those selling expenses, since they had already been deducted in calculating the constructed export price.

Ugine also argues that the Department understated the total amount of the entered value of the reported U.S. sales by a factor of 2.2046 when it multiplied the per-unit U.S. entered value amount by U.S. sales quantity to obtain the denominators in its assessments rate calculation of each importer. Specifically, the Department failed to convert the entered value of the subject merchandise to dollars per kilogram. Petitioners did not comment on either of these issues.

Department's Position

We agree with Ugine on both points. Our *Final Results* determined that, for those home market sales matched to U.S. sales where no commission was paid, home market commissions should be offset by indirect selling expenses. We agree with the respondent that our *Final Results* erroneously applied the incorrect indirect expenses to calculate the commission offset. Our *Final Results* erroneously applied the indirect selling expenses incurred in the United States to calculate the commission offset. We have changed our margin program calculation and corrected this error by applying the indirect selling expenses incurred in the country of manufacture.

In our *Final Results* we calculated assessment rates for each importer. However, our *Final Results* erroneously underestimated the total amount of the entered value by not converting the entered value of the subject merchandise to dollars per kilogram. We agree with Ugine that in the assessment rate portion of calculation, we should have converted the entered value amount by U.S. sales quantity to obtain a denominator in dollars per kilogram. Accordingly, we have applied the correct exchange rate and have calculated the entered value in dollars per kilogram.

Therefore, we are amending the final results of the antidumping duty administrative review of stainless steel sheet and strip in coils from France to reflect the correction of the above-cited ministerial error. The weighted-average dumping margin is as follows:

Producer/manufacturer exporter	Final weighted-average margin (percent)	Amended final weighted average margin (percent)
Ugine, S.A.	3.11	3.00

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: March 11, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–6601 Filed 3–18–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–833, C–122–841, C–428–833, C–274–805, C–489–809]

Countervailing Duty Investigations of Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Germany, Trinidad and Tobago, and Turkey: Notice of Alignment With Final Antidumping Duty Determinations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of alignment with antidumping duty Determinations.

EFFECTIVE DATE: March 19, 2002.

FOR FURTHER INFORMATION CONTACT: Melani Miller (Brazil and Trinidad and Tobago) at (202)482–0116; Sally Hastings (Canada) at (202)482–3464; Melanie Brown (Germany) at (202)482–4987; and Jennifer Jones (Turkey) at (202)482–4194. Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230.

SUPPLEMENTARY INFORMATION: On February 11, 2002, the petitioners [1] in the above-referenced proceedings submitted a letter requesting that the Department of Commerce align the final determinations in these investigations with the earliest final determination in the concurrent antidumping duty investigations of carbon and certain alloy steel steel wire rod.

The carbon and certain alloy steel wire rod antidumping investigations and countervailing duty investigations were initiated on the same date and have the same scope. *See Notice of Initiation of Countervailing Duty Investigations: Carbon and Alloy Steel Wire Rod from Brazil, Canada, Germany, Trinidad and Tobago, and Turkey,* 66 FR 49931 (October 1, 2001) and *Notice of Initiation of Antidumping Duty Investigations: Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine,* 66 FR 50164 (October 2, 2001). Therefore, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (''the Act''), we are aligning the final determinations in these investigations with the earliest final determination in the concurrent antidumping duty investigations of carbon and certain alloy steel wire rod.

The U.S. International Trade Commission is being advised of this alignment, in accordance with section 705(d) of the Act. This notice is published in accordance with section 705(a)(1) of the Act and 19 CFR section 351.210(b)(4) of the Department's regulations.

Dated: March 12, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–6603 Filed 3–18–02; 8:45 am]

BILLING CODE 3510–DS–P

[1] Co-Steel Raritan, Inc., GS Industries, Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc. Nucor Corporation is a supporter of the petitions.

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Amended Export Trade Certificate of Review, Application No. 87–16A04.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted originally to The Association for Manufacturing Technology (''AMT'') on May 19, 1987. Notice of issuance of the Certificate was published in the **Federal Register** on May 22, 1987 (52 FR 19371).

FOR FURTHER INFORMATION CONTACT: Vanessa M. Bachman, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, at telephone (202) 482–5131 (this is not a toll-free number) or by e-mail at *oetca@ita.doc.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001 *et seq.*) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2001).

The Office of Export Trading Company Affairs (''OETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of the certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 87–00004, was issued to The Association for Manufacturing Technology on May 19, 1987 (52 FR 19371, May 22, 1987) and last amended on March 6, 2001 (66 FR 15841, March 21, 2001).

AMT's Export Trade Certificate of Review has been amended to:

1. Add each of the following companies as a new ''Member'' of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): The Beckwood Press Company, Fenton, Missouri; Ultra Tech Machinery, Inc., Cuyahoga Falls, Ohio; ATS Michigan, Brighton, Michigan; ATS Southwest, Tucson, Arizona; ATS Carolina, Rock Hill, South Carolina; Advanced Machine & Engineering Co., Rockford, Illinois; The Gem City Engineering Company, Dayton, Ohio; ATS Systems Oregon Inc., Corvallis, Oregon; and DeVlieg Bullard II, Inc., Machesney Park, Illinois.

2. Delete the following companies as ''Members'' of the Certificate: American Pfauter Limited Partnership; Anorad Corporation; Automatic Design Concepts; Belden Inc.; Benchmaster Products, Inc.; Boston Digital Corporation; Buffalo Machine Tools of Niagara, Inc.; Clearing Niagara; Columbus McKinnon for the activities of its CM Positech Division; D&H Machinery, Inc.; Davenport Machine—A Dover Industries Company; Elox Corporation; Esterline Technologies; GEC Alsthom Cyril Bath Company; Harper Surface Finishing System, Inc.; Hayes-Lemmerz Process Control Automation, Inc.; Jesse Engineering Co.; Jewett Automation; Lumonics Corporation; MG Industries; Machine Tool Research, Inc.; MHI Machine Tool USA, Inc.; New Monarch Machine Tool Company; Olofsson Corporation; O.S. Walker Company, Inc.; PMC Industries; P.R. Hoffman Machine Products; Pacific Roller Die Co., Inc.; Parker-Majestic Inc.; The Producto Machine Company; RD & D Corporation; Rendas Tool & Die, Inc.; R. Howard Strasbaugh, Inc.; Teledyne; Themac, Inc.; Tree Machine Tool Co., Inc.; Tyler Machinery Co.; U.S. Amada, Ltd.; Unison Corporation; Utilase Systems, Inc.; Vermont—USA Machine Tool Group; Versa-Mil Inc./Phillips Corporation; Weldun Flexible Assembly Company; W.J. Savage Company, Inc.;

and Wisconsin Automated Machinery, and

3. Change the listing of two existing Members as follows: ''Kleer-Flo Industries'' to ''Kleer-Flo Company'' and ''LeBlond Makino Machine Tool Company'' to ''Makino Inc.''

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Dated: March 13, 2002.

Vanessa M. Bachman,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 02–6507 Filed 3–18–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Availability and Initiation of Review of Draft Revised Management Plan for the Hawaiian Islands Humpback Whale National Marine Sanctuary; Notice of Public Meetings

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice of availability; Notice of public meetings.

SUMMARY: The Hawaiian Islands Humpback Whale National Marine Sanctuary was Congressionally designated by the Hawaiian Islands National Marine Sanctuary Act (HINMSA) on November 4, 1992 (Subtitle C of Public Law 102–587, the Oceans Act of 1992). On Friday, March 28, 1997, the final regulations were published in the **Federal Register** (62 FR 14799), and became effective on June 6, 1997.

At the time of designation, NOAA made a commitment to the State of Hawaii that five years after the management plan and regulations had become effective, NOAA, in consultation with the State of Hawaii, would evaluate the progress made toward implementing the management plan, regulations, and goals for the Sanctuary. NOAA also agreed that after the evaluation was complete, NOAA would then re-submit the management plan and regulations in their entirety, as far as they affect State waters, to the Governor for his approval. The revised management plan is the result of the five-year evaluation and will be submitted to the Governor.

The review process is composed of four major stages: information collection and characterization; preparation and release of a draft revised management plan; public review and comment; and preparation and release of a final management plan.

In reviewing the original management plan in preparation for the five-year review by the NMSP and the State of Hawaii, it became clear that although a completely rewritten management plan was not necessary, some restructuring and revising of the document would be beneficial. First, the Sanctuary has accomplished many of the tasks outlined for it in the original management plan that can be removed. Second, the goals and objectives originally outlined needed to be revised to reflect the current and future direction of the Sanctuary, and the 2000 amendments of the National Marine Sanctuaries Act (NMSA). Finally, the structure of the original management plan does not follow the formats developed in the last three years for ongoing management plan reviews at other Sanctuaries. The NMSP and the State of Hawaii decided to revise certain parts of the original management plan and reformat the document, during the five-year review. The draft revised management plan does not propose any regulatory or boundary changes.

The draft revised management plan has been completed and is now available for public review. NOAA will conduct public meetings to gather information and other comments from individuals, organizations, and government agencies on the scope, types, and significance of issues related to the Sanctuary's draft revised management plan. Written comments may also be sent to the address below or via e-mail at *hihumpbackwhale@noaa.gov.* The public review period will run from March 19, 2002 until May 24, 2002. The public meetings are scheduled for May 1–May 9, 2002, as detailed below.

DATES: Written comments should be received on or before May 24, 2002. Public meetings will be held on May 1 on Oahu, May 2 on Maui, May 3 on Kauai, and May 8 and 9 on the Big Island of Hawaii (Kona and Hilo respectively).

ADDRESSES: Written comments may be sent to the Naomi McIntosh, Hawaiian Islands Humpback Whale National Marine Sanctuary (Management Plan Review), 6700 Kalanianaole Highway, Suite 104, Honolulu, Hawaii 96825. Comments will be available for public review at the same address.

Public meetings will be held at:

(1) Wednesday, May 1, 6 to 9 p.m., Tokai University Auditorium, 2241 Kapiolani Boulevard, Honolulu, Hawaii.

(2) Thursday, May 2, 6 to 9 p.m., Kihei Community Center, Lipoa Street at the corner of Piilani Highway, Kihei, Maui, Hawaii.

(3) Friday, May 3, 6 to 9 p.m., Radisson Kauai Beach Resort, Ginger Room, 4331 Kauai Beach Drive, Lihue, Kauai, Hawaii.

(4) Wednesday, May 8, 6 to 9 p.m., King Kamehameha's Kona Beach Hotel, Kamakahonu Ballroom, Rooms 1 & 2, 75–5660 Palani Road, Kailua-Kona, Hawaii (Big Island).

(5) Thurday, May 9, 6 to 9 p.m., Naniloa Hotel, Hoomalimali Room (ground floor beside the Sandalwood Dining Room) 93 Banyan Drive, Hilo, Hawaii (Big Island).

FOR FURTHER INFORMATION CONTACT: Anne Reisewitz, MPR Coordinator, by phone at (808) 397–2651 or via e-mail at *Annelore.Reisewitz@noaa.gov.*

Authority: 16 U.S.C. Section 1431 et seq.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: March 11, 2002.

Jamison S. Hawkins,

Deputy Assistant Administrator, for Ocean Services and Coastal Zone Management.

[FR Doc. 02–6265 Filed 3–18–02; 8:45 am]

BILLING CODE 3510–08–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

March 14, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending the 2002 limits.

EFFECTIVE DATE: March 19, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs

website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The 2002 import limits for textile products, produced or manufactured in China and exported during the period January 1, 2002 through December 31, 2002 were published on December 28, 2001 (see 66 FR 67229). That directive implemented stages one, two and three of integration and agreed annual growth, but did not apply accelerated growth. This directive amends these import limits for the application of accelerated growth, as provided by the Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend the 2002 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 67229, published on December 28, 2001.

D. Michael Hutchinson

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 14, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), this directive amends, but does not cancel, the directive issued to you on December 20, 2001. You are directed to prohibit, effective on March 19, 2002, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in China and exported during the twelve-month period beginning on January 1, 2002 and extending through December 31, 2002, in excess of the following levels of restraint:

Category	Twelve-month limit
Group I	
200, 218, 219, 226, 237, 239pt. [1], 300/301, 313–315, 317/326, 331pt. [2], 333–336, 338/339, 340–342, 345, 347/348, 351, 352, 359–C [3], 359–V [4], 360–363, 410, 433–436, 438, 440, 442–444, 445/446, 447, 448, 611, 613–615, 617, 631pt. [5], 633–636, 638/639, 640–643, 644, 645/646, 647, 648, 651, 652, 659–C [6], 659–H [7], 659–S [8], 666pt. [9], 845 and 846, as a group.	1,170,457,405 square meters equivalent.
Sublevels in Group I	
200	813,577 kilograms.
218	11,948,064 square meters.
219	2,634,635 square meters.
226	11,963,162 square meters.
237	2,227,977 dozen.
300/301	2,402,897 kilograms.
313	44,735,541 square meters.
314	53,877,550 square meters.
315	140,495,013 square meters.
317/326	23,782,544 square meters of which not more than 4,550,068 square meters shall be in Category 326.
331pt.	2,192,728 dozen pairs.
333	109,278 dozen.
334	342,206 dozen.
335	394,746 dozen.
336	188,676 dozen.
338/339	2,372,699 dozen of which not more than 1,801,137 dozen shall be in Categories 338–S/339–S [10].
340	813,136 dozen of which not more than 406,569 dozen shall be in Category 340–Z [11].
341	704,576 dozen of which not more than 422,746 dozen shall be in Category 341–Y [12].
342	278,256 dozen.
345	129,886 dozen.
347/348	2,362,066 dozen.
351	621,579 dozen.
352	1,672,806 dozen.
359–C	674,171 kilograms.
359–V	951,145 kilograms.
360	8,644,386 numbers of which not more than 5,896,306 numbers shall be in Category 360–P [13].
361	4,688,174 numbers.
362	7,737,506 numbers.
363	22,707,363 numbers.
410	1,032,404 square meters of which not more than 827,584 square meters shall be in Category 410–A [14] and not more than 827,584 square meters shall be in Category 410–B [15].
433	21,197 dozen.
434	13,554 dozen.
435	24,893 dozen.
436	15,336 dozen.
438	26,838 dozen.
440	38,341 dozen of which not more than 21,909 dozen shall be in Category 440–M [16].
442	40,587 dozen.
443	131,123 numbers.
444	213,825 numbers.
445/446	288,998 dozen.
447	71,789 dozen.
448	22,647 dozen.
611	5,885,543 square meters.
613	8,328,038 square meters.
614	13,086,915 square meters.
615	27,244,580 square meters.
617	19,035,513 square meters.
631pt.	319,220 dozen pairs.
633	61,815 dozen.
634	672,503 dozen.
635	709,375 dozen.
636	570,965 dozen.
638/639	2,518,205 dozen.
640	1,409,591 dozen.
641	1,335,296 dozen.
642	368,281 dozen.
643	543,550 numbers.
644	3,621,177 numbers.
645/646	830,540 dozen.
647	1,623,261 dozen.
648	1,159,809 dozen.
651	834,261 dozen of which not more than 146,877 dozen shall be in Category 651–B [17].
652	3,087,762 dozen.
659–C	441,666 kilograms.
659–H	3,087,149 kilograms.
659–S	677,928 kilograms.
666pt.	518,981 kilograms.
845	2,475,770 dozen.
846	185,087 dozen.
Group II	
332, 359–O [18], 459pt. [19] and 659–O [20], as a group.	40,821,172 square meters equivalent.

Category	Twelve-month limit
Group III	
201, 220, 224–V [21], 224–O [22], 225, 227, 369–O [23], 400, 414, 469pt. [24], 603, 604–O [25], 618–620 and 624–629, as a group.	48,213,146 square meters equivalent.
Sublevels in Group III	
224–V	3,963,954 square meters.
225	6,838,577 square meters.
Group IV	
852	373,334 square meters equivalent.
Levels not in a Group	
369–S [26]	617,889 kilograms.
863–S [27]	8,805,437 numbers.

[1] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[2] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[3] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[4] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[5] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[6] Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[7] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[8] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[9] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9984, 9404.90.8522 and 9404.90.9522.

[10] Category 338–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018 and 6109.10.0023; Category 339–S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[11] Category 340–Z: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2050 and 6205.20.2060.

[12] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[13] Category 360–P: only HTS numbers 6302.21.3010, 6302.21.5010, 6302.21.7010, 6302.21.9010, 6302.31.3010, 6302.31.5010, 6302.31.7010 and 6302.31.9010.

[14] Category 410–A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[15] Category 410–B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.3030, 5112.11.3060, 5112.11.6030, 5112.11.6060, 5112.19.6010, 5112.19.6020, 5112.19.6030, 5112.19.6040, 5112.19.6050, 5112.19.6060, 5112.19.9510, 5112.19.9520, 5112.19.9530, 5112.19.9540, 5112.19.9550, 5112.19.9560, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

[16] Category 440–M: only HTS numbers 6203.21.9030, 6203.23.0030, 6205.10.1000, 6205.10.2010, 6205.10.2020, 6205.30.1510, 6205.30.1520, 6205.90.3020, 6205.90.4020 and 6211.31.0030.

[17] Category 651–B: only HTS numbers 6107.22.0015 and 6108.32.0015.

[18] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070 (Category 359–V); 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[19] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[20] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, 6211.12.1020 (Category 659–S); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

[21] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.

[22] Category 224–O: all HTS numbers except 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020 (Category 224–V).

[23] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302.51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.0020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9905, 6307.90.9982, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505.

[24] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[25] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[26] Category 369–S: only HTS number 6307.10.2005.

[27] Category 863–S: only HTS number 6307.10.2015.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

D. Michael Hutchinson,
Acting Committee for the Implementation of Textile Agreements.

[FR Doc. 02–6595 Filed 3–18–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Oman

March 14, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: March 19, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota reopenings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 59581, published on November 29, 2001.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 14, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 23, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Oman and exported during the twelve-month period beginning on January 1, 2002 and extending through December 31, 2002.

Effective on March 19, 2002, you are directed to increase the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
334/634	192,242 dozen.
335/635	371,705 dozen.
338/339	771,289 dozen.
340/640	371,705 dozen.
341/641	278,778 dozen.
647/648	525,506 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–6596 Filed 3–18–02; 8:45 am]

BILLING CODE 3510– DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

March 14, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending the 2002 limits.

EFFECTIVE DATE: March 19, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota reopenings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The 2002 import limits for textile products, produced or manufactured in Taiwan and exported during the period January 1, 2002 through December 31, 2002 were published on December 28, 2001 (see 66 FR 67232). That directive implemented stages one, two and three of integration and agreed annual growth, but did not apply accelerated growth. This directive amends these import limits for the application of accelerated growth, as provided by the Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend the 2002 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel

Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001).

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 14, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), this directive amends, but does not cancel, the directive issued to you on December 20, 2001. You are directed to prohibit, effective on March 19, 2002, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Taiwan and exported during the twelve-month period which begins on January 1, 2002 and extending through December 31, 2002, in excess of the following levels of restraint:

Category	Twelve-month limit
Group I	
200–220, 224, 225/317/326, 226, 227, 300/301, 313–315, 360–363, 369–S [1], 369–O [2], 400–414, 469pt [3], 603, 604, 611, 613/614/615/617, 618, 619/620, 624, 625/626/627/628/629 and 666pt [4], as a group.	206,161,651 square meters equivalent.
Sublevels in Group I	
218	23,479,835 square meters.
225/317/326	41,676,644 square meters.
226	7,562,980 square meters.
300/301	1,788,159 kilograms of which not more than 1,500,487 kilograms shall be in Category 300; not more than 1,500,487 kilograms shall be in Category 301.
363	12,345,797 numbers.
611	3,384,364 square meters.
613/614/615/617	20,989,490 square meters.
619/620	15,427,600 square meters.
625/626/627/628/629	20,074,952 square meters.
Group I subgroup	
200, 219, 313, 314, 315, 361, 369–S and 604, as a group.	153,919,331 square meters equivalent.
Within Group I subgroup	
200	758,678 kilograms.
219	17,266,759 square meters.
313	68,854,714 square meters.
314	30,756,676 square meters.
315	23,567,452 square meters.
361	1,524,018 numbers.
369–S	493,149 kilograms.
604	240,280 kilograms.
Group II	
237, 239pt [5], 331pt. [6], 332, 333/334/335, 336, 338/339, 340–345, 347/348, 351, 352/652, 359–C/659–C [7], 659–H [8], 359pt. [9], 433-438, 440, 442, 443, 444, 445/446, 447/448, 459pt. [10], 631pt. [11], 633/634/635, 636, 638/639, 640, 641–644, 645/646, 647/648, 651, 659–S [12], 659pt. [13], 846 and 852, as a group.	622,375,380 square meters equivalent.
Sublevels in Group II	
237	741,238 dozen.
239pt.	1,352,222 kilograms.
331pt.	144,176 dozen pairs.
336	126,286 dozen.
338/339	834,601 dozen.
340	1,123,696 dozen.
345	131,954 dozen.
347/348	1,064,931 dozen of which not more than 1,064,931 dozen shall be in Categories 347–W/348–W [14].
352/652	3,350,496 dozen.
359–C/659–C	1,447,633 kilograms.
659–H	2,354,480 kilograms.
433	15,743 dozen.
434	10,933 dozen.
435	25,959 dozen.
436	5,169 dozen.
438	29,173 dozen.
440	5,651 dozen.
442	43,883 dozen.
443	44,079 numbers.
444	62,778 numbers.
445/446	138,335 dozen.
633/634/635	1,634,440 dozen of which not more than 959,317 dozen shall be in Categories 633/634 and not more than 850,077 dozen shall be in Category 635.
638/639	6,565,058 dozen.
640	1,058,909 dozen of which not more than 281,710 dozen shall be in Category 640–Y [15].
642	777,133 dozen.
643	524,564 numbers.
644	804,130 numbers.
645/646	4,107,691 dozen.
647/648	5,248,544 dozen of which not more than 5,248,544 dozen shall be in Categories 647–W/648–W [16].
659–S	1,601,702 kilograms.
Group II Subgroup	
333/334/335, 341, 342, 351, 447/448, 636, 641 and 651, as a group.	72,708,382 square meters equivalent.
Within Group II Subgroup	
333/334/335	324,897 dozen of which not more than 175,987 dozen shall be in Category 335.
341	345,508 dozen.
342	215,840 dozen.
351	359,087 dozen.
447/448	21,512 dozen.
636	396,193 dozen.
641	733,473 dozen of which not more than 256,716 dozen shall be in Category 641–Y [17].
651	450,319 dozen.
Group III	
Sublevel in Group III	
845	854,853 dozen.

[1] Category 369–S: only HTS number 6307.10.2005.

[2] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302.51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9905, 6307.90.9982, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505 (Category 369pt.).

[3] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[4] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9984, 9404.90.8522 and 9404.90.9522.

[5] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[6] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[7] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[8] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[9] Category 359pt.: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[10] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[11] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[12] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[13] Category 659pt.: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, 6211.12.1020 (Category 659–S); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

[14] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[15] Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[16] Category 647–W: only HTS numbers 6203.23.0060, 6203.23.0070, 6203.29.2030, 6203.29.2035, 6203.43.2500, 6203.43.3500, 6203.43.4010, 6203.43.4020, 6203.43.4030, 6203.43.4040, 6203.49.1500, 6203.49.2015, 6203.49.2030, 6203.49.2045, 6203.49.2060, 6203.49.8030, 6210.40.5030, 6211.20.1525, 6211.20.3820 and 6211.33.0030; Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060.

[17] Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

The conversion factors are as follows:

Category	Conversion factors (square meters equivalent/category unit)
333/334/335	33.75
352/652	11.3
359–C/659–C	10.1
633/634/635	34.1
638/639	12.5

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–6597 Filed 3–18–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Turkey

March 14, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: March 19, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing, carryforward and carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63037, published on December 4, 2001.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 14, 2002.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of Turkey and

exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on March 19, 2002, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit [1]
Fabric Group	
219, 313–O [2], 314–O [3], 315–O [4], 317–O [5], 326–O [6], 617, 625/626/627/628/629, as a group	233,420,974 square meters of which not more than 57,314,241 square meters shall be in Category 219; not more than 70,050,738 square meters shall be in Category 313–O; not more than 40,756,793 square meters shall be in Category 314–O; not more than 54,766,944 square meters shall be in Category 315–O; not more than 57,314,241 square meters shall be in Category 317–O; not more than 6,368,247 square meters shall be in Category 326–O, and not more than 38,209,497 square meters shall be in Category 617.
Limits not in a group	
338/339/638/639	7,978,335 dozen of which not more than 7,180,503 dozen shall be in Categories 338–S/339–S/638–S/639–S [7].
347/348	7,253,032 dozen of which not more than 2,714,584 dozen shall be in Categories 347–T/348–T [8].
351/651	1,300,674 dozen.
352/652	4,202,252 dozen.
361	2,735,067 numbers.
448	45,505 dozen.
604	3,427,698 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

[2] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

[3] Category 314–O: all HTS numbers except 5209.51.6015.

[4] Category 315–O: all HTS numbers except 5208.52.4055.

[5] Category 317–O: all HTS numbers except 5208.59.2085.

[6] Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[7] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020; Category 638–S: all HTS numbers except 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025; Category 639–S: all HTS numbers except 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.

[8] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2006, 6104.62.2011, 6104.62.2026, 6104.62.2028, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6204.69.9010. 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–6598 Filed 3–18–02; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Finance and Accounting Service announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 20, 2002.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Defense Finance and Accounting Service—Denver, (POSA) ATTN: Mr. Dan Wagle, 6760 East Irvington Place, Denver, CO 80279–3000.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Mr. Dan Wagle, 303–676–3372.

Title, Associated Form, and OMB Number: Waiver/Remission of Indebtedness Application, DD Form 2789; OMB License 0730–0009.

Needs and Uses: Used by current or former DoD civilian employees or military members to request waiver or remission of an indebtedness owed to the Department of Defense. Under 5 U.S.C. 5584, 10 U.S.C. 2774, and 32 U.S.C. 716, certain debts arising out of erroneous payments may be waived. Under 10 U.S.C. 4837, 10 U.S.C. 6161, and 10 U.S.C. 9837, certain debts may be remitted. Information obtained through this form is used in adjudicating the request for waiver or remission. Remissions apply only to active duty military members, and thus are not covered under the Paperwork Reduction Act of 1995.

Affected Public: Individuals.

Annual Burden Hours: 23,000 hours.

Number of Respondents: 11,500.

Responses per Respondent: 1.

Average Burden per Response: 2 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The referenced United States Code sections on waivers provide for an avenue of relief for individuals who owe debts to the United States which resulted from erroneous payments. Criteria for waiver of a debt includes a determination that there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the individual owing the debt or any other person interested in obtaining a waiver. Information obtained through the proposed collection is needed in order to adjudicate the waiver request under the law.

Dated: March 12, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 02–6543 Filed 3–18–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Finance and Accounting Service Announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 20, 2002.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Defense Finance and Accounting Service—Denver, ATTN: Ms. Sue Debevec, DFAS–PDSA/DE, 6760 E. Irvington Place, Denver, CO 80279–8000.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Ms. Sue Debevec, 303–676–8880.

Title, Associated Form, and OMB Number: Child Annuitant's School Certification, DD Form 2788; OMB Number 0730–0001.

Needs and Uses: In accordance with 10 U.S.C. 1447 and DoD Financial Management Regulation, 7000.14–R, Volume 7B, a child annuitant between the age of 18 and 22 years of age must provide evidence of intent to continue study or training at a recognized educational institution. The certificate is required for the school semester or other period in which the school year is divided.

Affected Public: Individuals.

Annual Burden Hours: 720 hours.

Number of Respondents: 3,600.

Responses per Respondent: 1 each semester.

Average Burden per Response: 12 minutes.

Frequency: Once each semester of full time school, ages 18 to 22.

SUPPLEMENTARY INFORMATION: The Child Annuitant's School Certification form is submitted to the child for completion and return to this agency. The child will certify as to his or her intent for future enrollment and a school official must certify on the past or present school enrollment of the child. By not obtaining school certification, overpayment of annuities to children would exist. This information may be collected from some schools which are nonprofit institutions such as religious institutions. If information is not received after the end of each school enrollment, over-disbursements of an annuity would be made to a child who elected not to continue further training or study.

Dated: March 12, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 02–6544 Filed 3–18–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

National Imagery and Mapping Agency

Privacy Act of 1974; System of Records

AGENCY: National Imagery and Mapping Agency, DoD.

ACTION: Notice to Delete and Amend Systems of Records.

SUMMARY: The National Imagery and Mapping Agency (NIMA) is deleting and amending systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on April 18, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: Comments should be sent to the National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Avenue, Bethesda, MD 20816–5003.

FOR FURTHER INFORMATION CONTACT: Ms. Christine May on (301) 227–4142.

SUPPLEMENTARY INFORMATION: The National Imagery and Mapping Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 13, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETION
B0901–08

SYSTEM NAME:

Civilian Employee Drug Abuse Testing Program Records (July 13, 1995, 60 FR 36124).

REASON:

NIMA now maintains these records under the Government-wide Privacy Act system of records, OPM/GOVT–10, Employee Medical File System Records.

B0228–04

SYSTEM NAME:

Historical Photographic Files (February 22, 1993, 58 FR 10189).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Public Affairs Office, National Imagery Mapping Agency, GC (D–39), 4600 Sangamore Road, Bethesda, MD 20816–5003.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations'.

* * * * *

STORAGE

Delete entry and replace with 'Prints and negatives filed in cabinets, and on electronic storage devices'.

* * * * *

B0228–04

SYSTEM NAME:

Historical Photographic Files.

SYSTEM LOCATION:

Public Affairs Office, National Imagery Mapping Agency, GC (D–39), 4600 Sangamore Road, Bethesda, MD 20816–5003.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual or VIP visitor photographed at NIMA functions or activities, i.e., award ceremonies, sporting events, retirement ceremonies, etc., that is of historical interest to NIMA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Photographs and negatives taken at any NIMA function or activity, i.e., award ceremonies, sporting events, retirement ceremonies, etc., that is of historical interest to NIMA.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations.

PURPOSE(S):

To furnish copies of photographs to organizations that requested photographs to be taken, to obtain the background information regarding events, ceremonies, awards, sports, retirements at NIMA for input to newspapers and magazine articles to recognize accomplishments and publications.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To News Media for Public Relations and Community Affairs Matters and to organizers of testimonials, banquets and parties for the purpose of obtaining background information regarding events, ceremonies, awards, sports, and retirements at NIMA.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Prints and negatives filed in cabinets, and on electronic storage devices.

RETRIEVABILITY:

Retrieved by name and/or event.

SAFEGUARDS:

Records are maintained in a secured area/locked file cabinets with access limited to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Records are Permanent. Records will be retired to Washington National Records Center on discontinuance of the installation.

SYSTEM MANAGER(S) AND ADDRESS:

NIMA Historian, National Imagery Mapping Agency, Mail Stop D–54, 4600 Sangamore Road, Bethesda, MD 20816–5003.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Road, Mail stop D–10, Bethesda, MD 20816–5003.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Road, Mail stop D–10, Bethesda, MD 20816–5003.

Written requests for information should contain the full name of the individual, current address and telephone number.

CONTESTING RECORD PROCEDURES:

NIMA's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in NIMA Instruction 5500.7R1; 32 CFR part 320; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Photographs taken at awards ceremonies; sporting events; retirement parties.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

B0502–03

SYSTEM NAME:

Master Billet/Access Record (April 20, 1995, 60 FR 19742). B0502–03

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'National Imagery and Mapping Agency, ATTN: Security Specialist, Mission Support, MSRS P–12, 12310 Sunrise Valley Drive, Reston, VA 20191–3449;

National Imagery and Mapping Agency, ATTN: Security Specialist, Mission Support, ATTN: MSBS D–60, 4600 Sangamore Road, Bethesda, MD 20816–5003;

National Imagery and Mapping Agency, ATTN: Security Specialist, Mission Support, ATTN: MSNS N–55, Building 213, 1200 First Street, SE., Washington, DC 20505–0001;

National Imagery and Mapping Agency, ATTN: Security Specialist, Mission Support, ATTN: MSWS L–59, 3200 S. Second Street, St. Louis, MO 63118–3399.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'All National Imagery and Mapping Agency (NIMA) employees and contractor personnel who have been indoctrinated for access to Sensitive Compartmented Information (SCI). In addition, employees of other government agencies are included for the period during which their security clearance or SCI access status is permanently certified to NIMA.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'File may contain name, rank/grade, military component or civilian status, Social Security Number, SCI billet number and title, SCI accesses authorized and held, date background investigation completed, date indoctrinated, date and state of birth.'

B0502–03

SYSTEM NAME:

Master Billet/Access Record.

SYSTEM LOCATION:

National Imagery and Mapping Agency, ATTN: Security Specialist, Mission Support, MSRS P–12, 12310 Sunrise Valley Drive, Reston, VA 20191–3449;

National Imagery and Mapping Agency, ATTN: Security Specialist, Mission Support, ATTN: MSBS D–60, 4600 Sangamore Road, Bethesda, MD 20816–5003;

National Imagery and Mapping Agency, ATTN: Security Specialist, Mission Support, ATTN: MSNS N–55, Building 213, 1200 First Street, SE, Washington, DC 20505–0001; and

National Imagery and Mapping Agency, ATTN: Security Specialist, Mission Support, ATTN: MSWS L–59, 3200 S. Second Street, St. Louis, MO 63118–3399.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All National Imagery and Mapping Agency (NIMA) employees and contractor personnel who have been indoctrinated for access to Sensitive Compartmented Information (SCI). In addition, employees of other

government agencies are included for the period during which their security clearance or SCI access status is permanently certified to NIMA.

CATEGORIES OF RECORDS IN THE SYSTEM:

File may contain name, rank/grade, military component or civilian status, Social Security Number, SCI billet number and title, SCI accesses authorized and held, date background investigation completed, date indoctrinated, date and state of birth.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; E.O. 12958, Classified National Security Information; NIMA Instruction 5205.1R1 Protection of Sensitive Compartmented Information, NIMA Instruction 5210.8 Physical Security, NIMA Instruction 5201.5R1 Serious Incident Reporting; and E.O. 9397 (SSN).

PURPOSE(S):

To identify and verify NIMA personnel authorized access to SCI in order to control access to secure areas for use of classified information, for periodic re-indoctrination (re-briefing) of employees for SCI access, for periodic security education and training, and for control and reissue of identification badges.

To certify personnel SCI access status to the Defense Intelligence Agency for updating the Security Management Information System.

To verify visit approval and/or access to classified material through Security Specialists/Assistants, NIMA Security Police and other contract security guards at NIMA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To other Federal agencies for the purpose of certifying and verifying an individual's SCI access status.

The DoD 'Blanket Routine Uses' set forth at the beginning of NIMA's compilation of systems of records notices apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system.

STORAGE:

Paper records and on electronic storage media.

RETRIEVABILITY:

Files are retrieved by name and at least one other personal identifier, such as a date of birth, place of birth, Social Security Number or military service number. Files may also be retrieved by billet number.

SAFEGUARDS:

Buildings or facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared and trained. Transmission of system data between NIMA components is by secure mail channels. Access to the database is password-protected.

RETENTION AND DISPOSAL:

Destroy two years after transfer, reassignment or separation of the individual from NIMA.

SYSTEM MANAGER(S) AND ADDRESS:

Security Specialist, National Imagery and Mapping Agency, Mission Support, MSRS P–12, 12310 Sunrise Valley Drive, Reston, VA 20191–3449;

Security Specialist, National Imagery and Mapping Agency, Mission Support, ATTN: MSBS D–60, 4600 Sangamore Road, Bethesda, MD 20816–5003;

Security Specialist, National Imagery and Mapping Agency, Mission Support, ATTN: MSNS N–55, Building 213, 1200 First Street, SE., Washington, DC 20505–0001; and

Security Specialist, National Imagery and Mapping Agency, Mission Support, ATTN: MSWS L–59, 3200 S. Second Street, St. Louis, MO 63118–3399.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Road, Mail stop D–10, Bethesda, MD 20816–5003.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Road, Mail stop D–10, Bethesda, MD 20816–5003.

Written requests for information should contain the full name of the individual, Social Security Number, current address and telephone number.

CONTESTING RECORD PROCEDURES:

NIMA's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in NIMA Instruction 5500.7R1; 32 CFR part 320; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is supplied by the individual concerned through completion of Standard From 86, ''Questionnaire For National Security Positions''. The basis for billet entries are security clearance or access approval messages or correspondence from the Defense Intelligence Agency; bases for incumbent entries are indoctrination oaths executed by incumbents at time of indoctrination.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

B0502–15

SYSTEM NAME:

Security Compromise Case Files (February 22, 1993, 58 FR 10189).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Documents relating to investigations of alleged security violations/incidents such as missing documents, unauthorized disclosure of information, unattended open security containers, documents not properly safeguarded, and matters of a similar nature.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace ''5 U.S.C. 301, Departmental regulations; E.O. 12958, Classified National Security Information; NIMA Instruction 5205.1R1 Protection of Sensitive Compartmented Information; NIMA Instruction 5210.8 Physical Security, NIMA Instruction 5201.5R1 Serious Incident Reporting.''

* * * * *

STORAGE:

Delete entry and replace with ''Paper records.''

* * * * *

B0502–15

SYSTEM NAME:

Security Compromise Case Files.

SYSTEM LOCATION:

National Imagery and Mapping Agency, ATTN: Chief, Security Branch, Mission Support, MSRS P–12, 12310 Sunrise Valley Drive, Reston, VA 20191–3449;

National Imagery and Mapping Agency, ATTN: Chief, Security Branch, Mission Support, ATTN: MSBS D–60, 4600 Sangamore Road, Bethesda, MD 20816–5003;

National Imagery and Mapping Agency, ATTN: Chief, Security Branch, Mission Support, ATTN: MSNS N–55, Building 213, 1200 First Street, SE, Washington, DC 20505–0001; and

National Imagery and Mapping Agency, ATTN: Chief, Security Branch, Mission Support, ATTN: MSWS L–59, 3200 S. Second Street, St. Louis, MO 63118–3399.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who may have violated NIMA security.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents relating to investigations of alleged security violations/incidents such as missing documents, unauthorized disclosure of information, unattended open security containers, documents not properly safeguarded, and matters of a similar nature.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental regulations; E.O. 12958, Classified National Security Information; NIMA Instruction 5205.1R1 Protection of Sensitive Compartmented Information; NIMA Instruction 5210.8 Physical Security, NIMA Instruction 5201.5R1 Serious Incident Reporting.

PURPOSE(S):

To protect records relating to investigations conducted into alleged and/or actual security violations by Security Office personnel and appointed investigating officials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of NIMA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

Retrieved by last name of individual.

SAFEGUARDS:

Buildings or facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained.

RETENTION AND DISPOSAL:

Files relating to alleged violations of a sufficiently serious nature that they are referred to the Departments of Justice or Defense for prosecutive determination, exclusive of files held by Department of Justice for Defense offices responsible for making such determinations are destroyed 5 years after close of case.

All other files, exclusive of papers placed in official personnel folders are destroyed 2 years after completion of final action or when no longer needed, whichever is sooner.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Security Branch, National Imagery and Mapping Agency, Mission Support, MSRS P–12, 12310 Sunrise Valley Drive, Reston, VA 20191–3449;

Chief, Security Branch, National Imagery and Mapping Agency, Mission Support, ATTN: MSBS D–60, 4600 Sangamore Road, Bethesda, MD 20816–5003;

Chief, Security Branch, National Imagery and Mapping Agency, Mission Support, ATTN: MSNS N–55, Building 213, 1200 First Street, SE., Washington, DC 20505–0001; and

Chief, Security Branch, National Imagery and Mapping Agency, Mission Support, ATTN: MSWS L–59, 3200 S. Second Street, St. Louis, MO 63118–3399.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Road, Mail stop D–10, Bethesda, MD 20816–5003.

Written requests for information should contain the full name of the individual, current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Information National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Road, Mail stop D–10, Bethesda, MD 20816–5003.

Written requests for information should contain the full name of the individual, current address and telephone number.

CONTESTING RECORD PROCEDURES:

NIMA's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in NIMA Instruction 5500.7R1; 32 CFR part 320; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Reporting organization or official.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

B0503–02

SYSTEM NAME:

Security Identification Accountability Files (February 22, 1993, 58 FR 10189).

CHANGES:

* * * * *

STORAGE:

Delete entry and replace with 'Paper records and on electronic storage media.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Transfer to Records Holding Area after last card or badge number entered has been accounted for. Hold for three years and destroy.'

* * * * *

B0503–02

SYSTEM NAME:

Security Identification Accountability Files.

SYSTEM LOCATION:

National Imagery and Mapping Agency, ATTN: Security Specialist, Mission Support, MSRS P–12, 12310 Sunrise Valley Drive, Reston, VA 20191–3449;

National Imagery and Mapping Agency, ATTN: Security Specialist, Mission Support, MSBS D–60, 4600 Sangamore Road, Bethesda, MD 20816–5003;

National Imagery and Mapping Agency, ATTN: Security Specialist Mission Support, MSNS N–55, Building 213, 1200 First Street, SE., Washington, DC 20505–0001; and

National Imagery and Mapping Agency, ATTN: Security Specialist, Mission Support, MSWS L–59, 3200 S. Second Street, St. Louis, MO 63118–3399.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any civilian employee.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains the application, supporting materials and the number of the identification badges.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental regulations and E.O. 12958, Classified National Security Information.

PURPOSE(S):

To maintain accountability for various identification cards/badges issues and identify to whom issued.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of NIMA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and on electronic storage media.

RETRIEVABILITY:

Retrieved by individual's name.

SAFEGUARDS:

Access to database restricted to authorized user name and password to agency server. Paper records are stored in locked safes inside a limited access office.

RETENTION AND DISPOSAL:

Transfer to Records Holding Area after last card or badge number entered has been accounted for. Hold for three years and destroy.

SYSTEM MANAGER(S) AND ADDRESS:

Security Specialist, National Imagery and Mapping Agency, Mission Support, MSRS P–12, 12310 Sunrise Valley Drive, Reston, VA 20191–3449;

Security Specialist, National Imagery and Mapping Agency, Mission Support, MSBS D–60, 4600 Sangamore Road, Bethesda, MD 20816–5003;

Security Specialist, National Imagery and Mapping Agency, Mission Support, MSNS N–55, Building 213, 1200 First Street, SE., Washington, DC 20505–0001; and

Security Specialist, National Imagery and Mapping Agency, Mission Support, MSWS L–59, 3200 S. Second Street, St. Louis, MO 63118–3399.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Road, Mail stop D–10, Bethesda, MD 20816–5003.

Written requests for information should contain the full name of the individual, current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Road, Mail stop D–10, Bethesda, MD 20816–5003.

Written requests for information should contain the full name of the individual, current address and telephone number.

CONTESTING RECORD PROCEDURES:

NIMA's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in NIMA Instruction 5500.7R1; 32 CFR part 320; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual's badge request and personnel forms.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

B0503–03

SYSTEM NAME:

Firearms Authorization Files (February 22, 1993, 58 FR 10189).

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental regulations; DoD Directive 5210.56, Use of deadly force and the carrying of firearms by DoD personnel engaged in law enforcement and security duties; NIMA Policy Directive 5200R2, Operational Security; NIMA Instruction 5210.2R2, Use of force.'

* * * * *

B0503–03

SYSTEM NAME:

Firearms Authorization Files.

SYSTEM LOCATION:

National Imagery and Mapping Agency, ATTN: Chief, Security Branch, Mission Support, ATTN: MSRS P–12, 12310 Sunrise Valley Drive, Reston, VA 20191–3449;

National Imagery and Mapping Agency, ATTN: Chief, Security Branch, Mission Support, ATTN: MSBS D–60, 4600 Sangamore Road, Bethesda, MD 20816–5003;

National Imagery and Mapping Agency, ATTN: Chief, Security Branch, Mission Support, ATTN: MSNS N–55, Building 213, 1200 First Street, SE., Washington, DC 20505–0001; and

National Imagery and Mapping Agency, ATTN: Chief, Security Branch, Mission Support, ATTN: MSWS L–59, 3200 S. Second Street, St. Louis, MO 63118–3399.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Security guards that have been issued firearms and ammunition.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents authorizing NIMA civilian guards to carry firearms. Included are firearms authorization cards and related papers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental regulations; DoD Directive 5210.56, Use of deadly force and the carrying of firearms by DoD personnel engaged in law enforcement and security duties; NIMA Policy Directive 5200R2, Operational Security; NIMA Instruction 5210.2R2, Use of force.

PURPOSE(S):

To maintain required firearms annual qualifications records, weapons serial numbers and firearms authorization cards issued to each assigned Security Police.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of NIMA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

Retrieved by last name of employee.

SAFEGUARDS:

Buildings or facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained.

RETENTION AND DISPOSAL:

Destroy upon expiration of authorization.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Security Branch, National Imagery and Mapping Agency, Mission Support, ATTN: MSRS P–12, 12310 Sunrise Valley Drive, Reston, VA 20191–3449;

Chief, Security Branch, National Imagery and Mapping Agency, Mission Support, ATTN: MSBS D–60, 4600 Sangamore Road, Bethesda, MD 20816–5003;

Chief, Security Branch, National Imagery and Mapping Agency, Mission Support, ATTN: MSNS N–55, Building 213, 1200 First Street, SE., Washington, DC 20505–0001; and Chief, Security Branch, National Imagery and Mapping Agency, Mission Support, ATTN: MSWS L–59, 3200 S. Second Street, St. Louis, MO 63118–3399.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Road, Mail stop D–10, Bethesda, MD 20816–5003.

Written requests for information should contain the full name of the individual, current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Road, Mail stop D–10, Bethesda, MD 20816–5003.

Written requests for information should contain the full name of the individual, current address and telephone number.

CONTESTING RECORD PROCEDURES:

NIMA's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in NIMA Instruction 5500.7R1; 32 CFR part 320; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Subject individual to whom the firearm is issued, home address and telephone number, weapon serial number, and authorization card issued.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

B0503–05

SYSTEM NAME:

Vehicle Registration and Driver Record File (February 22, 1993, 58 FR 10189).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Any person privileged to operate a motor vehicle on a military installation or NIMA leased properties and who has been involved in a chargeable traffic accident or whose commission of a moving traffic violation has been verified.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''50 U.S.C. 797, Security Regulations and Orders; Penalty for Violation; 5 U.S.C. 301, Departmental Regulations; and NIMA Instruction 4540.1R3, Parking and Vehicular Traffic.''

* * * * *

SAFEGUARDS:

Delete entry and replace with ''Access to electronic file or locked filing cabinet is limited to authorized individuals or with valid user name and password.''

* * * * *

B0503–05

SYSTEM NAME:

Vehicle Registration and Driver Record File.

SYSTEM LOCATION:

National Imagery and Mapping Agency, ATTN: Security Specialist, Mission Support, MSRS P–12, 12310 Sunrise Valley Drive, Reston, VA 20191–3449;

National Imagery and Mapping Agency, ATTN: Security Specialist, Mission Support, MSBS D–60, 4600 Sangamore Road, Bethesda, MD 20816–5003;

National Imagery and Mapping Agency, ATTN: Security Specialist Mission Support, MSNS N–55, Building 213, 1200 First Street, SE, Washington, DC 20505–0001; and

National Imagery and Mapping Agency, ATTN: Security Specialist, Mission Support, MSWS L–59, 3200 S. Second Street, St. Louis, MO 63118–3399.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any person privileged to operate a motor vehicle on a military installation or NIMA leased properties and who has been involved in a chargeable traffic accident or whose commission of a moving traffic violation has been verified.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains a record of issuance of decal and of all traffic offenses/incidents and actions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 50 U.S.C. 797, Security Regulations and Orders; Penalty for Violation; and NIMA Instruction 4540.1R3, Parking and Vehicular Traffic.

PURPOSE(S):

To record traffic offenses, incidents and actions taken, and to track parking permits issued to agency personnel and contractors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of NIMA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and on electronic storage media.

RETRIEVABILITY:

Retrieved by last name of individual.

SAFEGUARDS:

Access to electronic file or locked filing cabinet is limited to authorized individuals or with valid user name and password.

RETENTION AND DISPOSAL:

Destroy one year after revocation or expiration.

SYSTEM MANAGER(S) AND ADDRESS:

Security Specialist, National Imagery and Mapping Agency, Mission Support, MSRS P–12, 12310 Sunrise Valley Drive, Reston, VA 20191–3449;

Security Specialist, National Imagery and Mapping Agency, Mission Support,

MSBS D–60, 4600 Sangamore Road, Bethesda, MD 20816–5003;

Security Specialist, National Imagery and Mapping Agency, Mission Support, MSNS N–55, Building 213, 1200 First Street, SE., Washington, DC 20505–0001; and

Security Specialist, National Imagery and Mapping Agency, Mission Support, MSWS L–59, 3200 S. Second Street, St. Louis, MO 63118–3399.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Road, Mail stop D–10, Bethesda, MD 20816–5003.

Written requests for information should contain the full name of the individual, current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Road, Mail stop D–10, Bethesda, MD 20816–5003.

Written requests for information should contain the full name of the individual, current address and telephone number.

CONTESTING RECORD PROCEDURES:

NIMA's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in NIMA Instruction 5500.7R1; 32 CFR part 320; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Report of traffic violation from Security police.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

B0503–09

SYSTEM NAME:

Key Accountability Files (February 22, 1993, 58 FR 10189).

CHANGES:

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RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Individual's key requests and personnel forms.''

* * * * *

B0503–09

SYSTEM NAME:

Key Accountability Files.

SYSTEM LOCATION:

National Imagery and Mapping Agency, ATTN: MSRS P–12, 12310 Sunrise Valley Drive, Reston, VA 20191–3449;

National Imagery and Mapping Agency, ATTN: MSBS D–60, 4600 Sangamore Road, Bethesda, MD 20816–5003;

National Imagery and Mapping Agency, ATTN: MSNS N–55, Building 213, 1200 First Street, SE., Washington, DC 20505–0001; and National Imagery and Mapping Agency, ATTN: MSWS L–59, 3200 S. Second Street, St. Louis, MO 63118–3399.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals with keys to a secure area.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documentation relating to the issue, return and accountability for keys to secure areas.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; NIMA Instruction 5210.8 Physical Security; and E.O. 12958, Classified National Security Information.

PURPOSE(S):

To maintain documentation on periodic inspections, key accountability, reference checks and daily use records and investigations into loss or destruction of secure areas.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of NIMA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

Retrieved by individual's last name.

SAFEGUARDS:

Buildings, facilities employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

Files relating to keys to restricted security areas are destroyed 3 years after turn-in of key or on discontinuance, whichever is first.

Files relating to keys to other areas are destroyed 6 months after turn-in of key or on discontinuance, whichever is first.

SYSTEM MANAGER(S) AND ADDRESS:

National Imagery and Mapping Agency, ATTN: Locksmith, MSRS P–12, 12310 Sunrise Valley Drive, Reston, VA 20191–3449;

National Imagery and Mapping Agency, ATTN: Locksmith, MSBS D–60, 4600 Sangamore Road, Bethesda, MD 20816–5003;

National Imagery and Mapping Agency, ATTN: Locksmith, MSNS N–55, Building 213, 1200 First Street, SE., Washington, DC 20505–0001; and

National Imagery and Mapping Agency, ATTN: Locksmith; MSWS L–59, 3200 S. Second Street, St. Louis, MO 63118–3399.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Road, Mail stop D–10, Bethesda, MD 20816–5003.

Requests from individuals should contain the full name of the individual, current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Road, Mail stop D–10, Bethesda, MD 20816–5003.

Requests from individuals should contain the full name of the individual, current address and telephone number.

CONTESTING RECORD PROCEDURES:

NIMA's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in NIMA Instruction 5500.7R1; 32 CFR part 320; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual's key requests and personnel forms.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

B0614–01

SYSTEM NAME:

Military Personnel Information Files (July 13, 1995, 60 FR 36124).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''National Imagery Mapping Agency, Executive Directory Military Personnel (D–84), 4600 Sangamore Road, Bethesda, MD 20816–5003.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental regulations.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Chief of Military Personnel Division, National Imagery Mapping Agency, Executive Directory Military Personnel (D–84) 4600 Sangamore Road, Bethesda, MD 20816–5003.''

* * * * *

B0614–01

SYSTEM NAME:

Military Personnel Information Files.

SYSTEM LOCATION:

National Imagery Mapping Agency, Executive Directory Military Personnel (D–84), 4600 Sangamore Road, Bethesda, MD 20816–5003.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel assigned to NIMA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of Army, Air Force, Navy, or Marine Corps qualification records and assignment orders. Copies of leave requests, biographies, evaluation/fitness reports, security information, completed decoration documents, and finance action forms. Routine correspondence regarding assignment actions, duty assignments, extension of NIMA tour, requests for training, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental regulations.

PURPOSE(S):

To determine the acceptability of an individual nominated by the parent service for a NIMA position: to be used in the preparation of efficiency/fitness/effectiveness reports, award recommendations, and other personnel actions. Documents used to assist HRM personnel in serving as liaison between the individual, NIMA, and the servicing Military Personnel offices.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of NIMA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Alphabetically by name of individual.

SAFEGUARDS:

Records are maintained in a secured area/locked file cabinets with access limited to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Retain until departure of individual from NIMA. Hold one year and destroy.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Military Personnel Division, National Imagery Mapping Agency, Executive Directory Military Personnel (D–84) 4600 Sangamore Road, Bethesda, MD 20816–5003.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Road, Mail stop D–10, Bethesda, MD 20816–5003.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Office of National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Road, Mail stop D–10, Bethesda, MD 20816–5003.

Written requests for information should contain the full name of the individual, current address and telephone number, service number on all correspondence received from this office.

For personal visits, the individual should be able to provide some acceptable identification, such as, drivers license, employing office's identification cards, and give some verbal information that could be verified. Visits are limited to normal working hours.

CONTESTING RECORD PROCEDURES:

NIMA's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in NIMA Instruction 5500.7R1; 32 CFR part 320; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from the individual's Service Military Personnel Center, the individual's rating official within the NIMA and the individual concerned.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

B1202–17

SYSTEM NAME:

Contracting Officer Designation Files (February 22, 1993, 58 FR 10189).

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations.'

* * * * *

STORAGE:

Delete 'and/or Kardex book' from entry.

RETRIEVABILITY:

Delete entry and replace with 'Information is retrieved by name of contracting officer.'

SAFEGUARDS:

Delete entry and replace with 'Records are maintained in a secured area with access limited to authorized personnel whose duties require access. The database can only be accessed via a correct user ID and password.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Certificate of Appointment and background information on education, training, experience, Standard Form 1402, and specific information on procurement authorities delegated.''

* * * * *

B1202–17

SYSTEM NAME:

Contracting Officer Designation Files.

SYSTEM LOCATION:

NIMA Contracting Officers are located at NIMA Headquarters in Bethesda, MD; Reston, VA; Washington Navy Yard, Washington, DC; and NIMA St. Louis, MO. Official mailing addresses are published as an appendix to NIMA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employee designated Contracting Officer and Contracting Officer Representative.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents reflecting the designation and rescission of Contracting Officers and Contracting Officers representative which includes the specific procurement authorities delegated.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations.

PURPOSE(S):

To maintain documents showing individual designated as Contracting Officers; to include data reflecting limitations, restrictions on authority, and background information for use in other contracts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ''Blanket Routine Uses'' set forth at the beginning of NIMA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and on electronic medium.

RETRIEVABILITY:

Information is retrieved by name of contracting officer.

SAFEGUARDS:

Records are maintained in a secured area with access limited to authorized personnel whose duties require access. The database can only be accessed via a correct user ID and password.

RETENTION AND DISPOSAL:

Records are temporary. NIMA destroys these records upon the transfer, reassignment or termination of the contracting officer.

SYSTEM MANAGER(S) AND ADDRESS:

Procurement Technician, National Imagery Mapping Agency, PCP (D–15), 4600 Sangamore Road, Bethesda, MD 20816–5003.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Road, Mail stop D–10, Bethesda, MD 20816–5003.

Written requests for information should contain the full name of the individual, current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Road, Mail stop D–10, Bethesda, MD 20816–5003.

Written requests for information should contain the full name of the individual, current address and telephone number.

CONTESTING RECORD PROCEDURES:

NIMA's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in NIMA Instruction 5500.7R1; 32 CFR part 320; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Certificate of Appointment and background information on education, training, experience, Standard Form 1402, and specific information on procurement authorities delegated.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–6546 Filed 3–18–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army

MTMC Pam 55–4, ''How To Do Business in the DOD Personal Property Program.''

AGENCY: Department of the Army, Military Traffic Management Command (MTMC), DoD.

ACTION: Notice; final policy.

SUMMARY: MTMC has established new qualifying procedures to be able to participate in the Department of Defense (DOD) Personal Property Program (hereafter referred to as ''The Procedures''). These procedures were finalized after review of comments received in response to our proposal published in the **Federal Register** (66 FR 56084), on November 6, 2001. Details of these comments are at the end of this notice, under ''Background.'' MTMC, as Program Manager of the DOD Personal Property Shipment and Storage Program (hereafter referred to as ''The Program'') has streamlined and strengthened the carrier qualification process. All present and future participants (commercial carriers) in the Domestic and International Personal Property Programs are required to use our streamlined qualification process using the web, email and/or fax, and meet the new financial requirements as further discussed in this document.

EFFECTIVE DATES: April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Sylvia Walker, HQ Military Traffic Management Command, ATTN: MTPP–HQ, Room 10N67, Hoffman Bldg II, 200 Stovall St., Alexandria, VA 22332–5000, telephone (703) 428–2982, fax (703) 428–3321 or email walkersylvia@mtmc.army.mil

SUPPLEMENTARY INFORMATION: To further DoD's goal of making the Personal Property Qualification Program stronger and more streamlined, changes are being implemented to:

a. Simplify and reduce paperwork involved in the carrier qualification process.

b. Shorten the approval processing time.

c. Meet MTMC's legal obligation to conduct business with responsible commercial carriers only.

d. Assess any financial risk to the Government.

e. Improve Program performance and quality assurance.

f. Incorporate suggestions made by the carrier industry.

MTMC's intent is to incorporate common commercial business practices, and take advantage of efficiencies gained from the use of technology to streamline and strengthen the carrier qualification process. These changes, and the new requirements, supersede the current ''How To Do Business MTMC Pamphlet 55–4.'' ''The Procedures'' will be updated and available for your use on the MTMC home page at *www.mtmc.army.mil* on the Internet. Carriers currently participating in ''The Program'' must submit requested documentation

between April 15–May 15, 2002. New carriers must comply with the new procedures upon application. New applications will be accepted after the moratorium is lifted.

Note: On November 6, 2001, MTMC imposed a 1-year moratorium on accepting new carrier qualification applications.

If a carrier currently participating in ''The Program'' does not meet the new requirements, and approval is revoked, the carrier may re-apply as a ''new'' carrier only after the moratorium is lifted.

1. The new procedures are as follows:

a. *Requirements for Documentation:* Carriers currently in the program are required to submit four (4) qualification forms during April 15–May 15, 2002. All forms must be received no later than midnight (EST) on May 15, 2002. The forms are as follows:

(1) Electronic Tender of Service Signature Sheet (ETOSSS).

(2) Certificate of Cargo Liability Insurance (MTHQ Form 49–R).

(3) Performance Bond (that is effective 2002 Winter Cycle).

(4) List of Countries and Codes of Service (LOCCS).

These forms must be submitted electronically via the Internet or by fax to (703) 428–3321. Carriers should have internal capability to access the Internet, but we do not mandate this requirement. A carrier may elect to use a third party vendor to electronically submit qualification documentation, but assumes all responsibility for all documents arriving within the established time-frame. You can access the forms by going to *www.mtmc.army.mil*, click on Personal Property, click on Carrier Approval, click on Carrier Qualification Home Page, and Carrier Qualification Registration Page. There you will find instructions for completing all the documents. Instructions for accessing the forms will also be included in ''the Procedures,'' which is also located at *www.mtmc.army.mil* on MTMC's web site.

Documentation will be reviewed on a first come, first served basis. The submission date will be determined by the electronic date on the Electronic Tender of Service Signature Sheet received in MTMC's database via electronic means. After completing all required documentation, the MTMC computer will send back a dated response saying that we have received all the required documentation. It will be the carrier's responsibility to ensure any electronic or faxed documentation has been submitted to MTMC by the required deadline. MTMC will not accept late submissions after midnight (EST) on May 15, 2002.

During the transition period while documents are being processed, carriers currently participating may continue to do business with DoD. Before filing rates for the IW02/DW02 cycles, carriers should consider the contents of this exam **Federal Register** notice to make sure they comply with the new requirements. Upon MTMC's review of each submission, carriers not meeting the qualification requirements will have 21 calendar days from the date of notification from MTMC, to provide additional information. If approval is revoked, the carrier's rates will be administratively removed. New carriers must submit previously listed forms at time of application.

b. *Financial Ratios*: For carriers currently participating, a quick ratio of 1:1 or better is required and a debt to equity ratio of 4:1 is desired. New carriers (those applying after the moratorium is lifted) must meet the 1:1 and 4:1 at the time of application.

For carriers currently participating, the status of their debt to equity ratio will be determined upon submission of their 2002 financial statements as detailed in paragraph C of this document. Carriers currently participating that do not meet the desired ratio will not be automatically removed from MTMC's program, as they are not intended to be ''pass/fail'' standards. Rather, those not meeting the 4:1 ratio must provide an explanation of the reason why in writing. If the explanation is acceptable, carriers will be allowed to stay in the program, but will be re-evaluated within one year. If the explanation is not acceptable, MTMC will require additional information to be provided so that a financial risk assessment can be performed. As always, MTMC reserves the right to convene a Carrier Review Board, if it deems necessary. The carrier will not lose their approval status until the financial risk assessment has been completed.

The purpose of the desired ratio, and the possible requirement for additional information, is to assess the risk the government assumes in doing business with individual carriers. MTMC's goal is to deal with only financially viable companies. MTMC realize that sometimes those with the greatest debt load are those making the effort to invest in the future of their company, to better serve our military customers. And, they are seen as the best credit risks to lend money to. However, this is not always the case, and we must weed out those that don't fall into this category.

The following definitions are provided for clarification purposes only. If there are further questions on the definitions, or how to best present financial data, carriers should consult their own accountants.

Quick Ratio (1:1). The quick ratio, measures the ability of a business to meet their current bills. Quick ratio is cash plus receivables divided by current liability. This is similar to current ratio with the exception that inventory and prepaids are subtracted from the total current assets prior to making the computation. These items are deleted prior to computing the ratio because inventory and prepaids are not easily converted to cash to pay debts. Further, if a company needs to liquidate inventory or prepaids to pay bills, they are in liquidation process and not really a going concern. MTMC recognizes the industry's uniqueness in that many transportation related costs are incurred and paid after the military shipment is picked-up from the member and prior to delivery or placement in SIT. This lag time causes a mismatch between revenues and expenses. If the expenses are included in the financial statements and identifed separately as prepaid transportation expenses or unbilled receivables, MTMC will consider them in the Quick Ratio analysis.

Debt to Equity Ratio (4:1). Debt to equity is total liabilities divided by the company's equity.

c. *Financial Statement Requirements:* Annually, carriers must provide audited financial statements with an auditor's report, or reviewed financial statements with an accountant review report. Financial statements must be prepared according to generally accepted accounting principles using the accrual basis, including balance sheets and profit/loss statements. Financial statements, audit, or review memorandums must include all referenced footnotes. A carrier may voluntarily provide company tax returns in addition to the financial statements, if they do desire. Statements must be transmitted electronically or via fax to (703) 428–3321, reflecting the signature of the company's executive stating that they are correct to the best of their knowledge. These statements and other factors will be evaluated by MTMC to determine the need for any additional actions.

Carriers currently participating in the program are not required to provide financial statements during the April 15–May 15, 2002, timeframe. Year 2002 statements must be submitted within 120-calendar days, of year-end, normally defined as December 31, 2002. Under this scenario, the financial

statements would be submitted no later than May 1, 2003. If a company closes their books on a fiscal year basis (or other than December 31, 2002), then financial statements and reports should be submitted within 120 calendar days of that date. For example, a carrier currently participating in the program closing out their books October 31, 2002, would be required to submit the financial statements no later than March 1, 2003. Companies desiring to change their report dates must coordinate this with the Chief of MTMC's Internal Review Office at (703) 428–3205.

Once the moratorium is lifted, new carriers applying for initial approval must submit their most recent financial statements to MTMC at the time of application. These statements must meet at least our minimum requirements. Upon approval, these new carriers must submit annual financial statements electronically or by fax, in accordance with when they close their books (as stated in the previous paragraph).

The financial statements must document the business operations of the single business entity or organization that seeks to qualify to do business with the DOD. Combined or consolidated statements that embed the finances of other companies will not be accepted. Letters of guarantee from a parent company will also not be accepted. However, for reporting purposes, a carrier may submit one document that reflects several companies separate financial information, as long as the financial information is reported in each individual company's name and reflects that company's account information. Each individual company must comply with desired ratio minimums, as detailed in paragraph b. New companies must meet required ratio minimums at time of application. In other words, MTMC wants to see the health of the individual companies. MTMC will not accept truly consolidated reports where there is no separation from one company to another.

Additional Information: If MTMC does not receive financial statements within the 120 calendar day time-frame, the company may be placed in nonuse due to non-compliance with program requirements. No *pro forma* statements will be accepted in lieu of actual financial statements. Additionally, MTMC reserves the right to obtain services from an independent third party source to conduct financial risk analysis of carrier's financials. This analysis will compare the company with appropriate industry norms. This information may be used in a carrier review board action to assist in the determination of financial risk to the government.

d. *Cargo Liability Insurance:* For Domestic and International programs, the cargo liability minimum amount per shipment will be $22,500. The aggregate amount will remain $150,000. The Certificate of Cargo Liability Insurance form (MTHQ Form 49R) located on MTMC's website, must reflect a signature of the insurance representative as proof of insurance. No other forms will be accepted.

e. *Performance Bonds:* Performance Bonds are required in both the international and domestic interstate programs. The bond requirement does not apply to domestic intrastate carriers at this time.

For the International program, the bond requirement will remain at $100,000 or 2.5%, of the international revenue based on previous year revenue, whichever is greater. International carriers must submit (electronically or by fax) a ''continuous, until cancelled,'' bond, that reflects signatures of the surety representative and a carrier representative listed on the ETOSSS. MTMC will review the international bond amount semi-annually. If it is determined the bond needs to be increased, the carrier will be notified in writing and provided 30 days to submit a bond or a rider to the bond on file reflecting the updated amount. MTMC will entertain written requests for an additional 30 days to increase the bond amount on a case-by-case basis. Since all international carriers currently participating already have a bond in place, no submission is required at this time. The current bond will remain in effect until you are notified that there is a requirement to increase the bond. Future international carriers must have the bond in place 1 month before the cycle begins in which they wish to participate.

For the domestic interstate program, the bond must be $50,000 and have an effective date of November 1, 2002. Domestic interstate carriers currently participating in the program must submit a ''continuous until cancelled'' bond that reflects signatures of the surety representative and a carrier representative listed on the ETOSSS, electronically or by fax, in the amount of $50,000, effective winter cycle 2002. In future years, the bond will be 2.5% of your domestic interstate personal property revenue based on the previous year or $50,000, whichever is greater. MTMC will review this annually. If it is determined the bond needs to be increased, the carrier will be notified in writing and provided 30 days to submit a bond or a rider to the bond on file reflecting the updated amount. MTMC will entertain written requests for an additional 30 days to increase the bond amount on a case-by-case basis. Future domestic carriers must have the bond in place 1 month before the cycle in which they wish to participate begins.

f. *Experience Requirements:* The company must have 3 years Government and/or commercial experience in the movement of Personal Property. MTMC will use the date on the operating authority, or if the state is deregulated, the date on the state's Articles of Incorporation for determining the 3-year experience. MTMC will require proof at time of application of the 3-year experience (such as, bills of lading, letters of reference, etc. of personal property movement). Carriers currently participating in the program are exempt from this requirement. However, new carriers must comply with the 3-year experience rule, and provide the proof at the time of application.

Additionally, carriers must continually have two (2) key employees (i.e. involved in the management of the company) with at least three years experience. the names of these individuals are required to be included on the ETOSSS.

g. *Notification Requirements:* All carriers are required to notify MTMC within 45 calendar days of a change of ownership, a change of corporate name, or change of key personnel.

(1) Change of Ownership: When a company changes ownership, a novation agreement must be submitted to MTMC. Approval will be based on a review of the sales agreement and evidence to show that the carrier complies with all carrier qualification requirements. The new asset owner (transferee) must assume all obligations of the carrier as if they were the original owner.

(2) Change of Name: When a company changes their name, they must submit a change of name notification.

(3) Change of Key Personnel: When a company changes key personnel they must submit an updated ETOSSS.

Detailed instructions on the novation process, change of name notification and change of key personnel can be located in the ''How to do Business in the DOD Personal Property Program'' pamphlet located at *www.mtmc.army.mil* on MTMC's website.

2. MTMC will use the Department of Transportation (DOT) SAFER system to obtain a carrier's safety rating, verify operating authority, and note any safety infractions. This safety rating may be used when carriers are seeking initial/

additional approval or in Carrier Review Board actions.

3. Though nothing changes in the Common Financial and/or Administration Control (CFAC) arena as a result of this streamlining and strengthening initiative, domestic and international carriers are reminded of the continuing requirement to declare CFAC (affiliate) relationships with other participating carriers in accordance with the Tender of Service. This declaration will continue to be accomplished on the ETOSSS and will be submitted electronically to MTMC (as stated previously). Please note we do intend to reduce the incentive for paper companies in our future program.

CFAC (affiliates) means associated business concerns or individuals directly or indirectly, where (a) either one controls or can control the other(s) or where (b) a third party controls or can control them both. All currently participating carriers in the International Program and new international carriers will continue to be required to refrain from competing, i.e. submitting rates, in the same code of service/channel combinations served by any of their affiliates. Carriers failing to disclose CFAC (affiliate) relationships may be removed from the Program for a period of up to 2 years and may be prosecuted for filing a false official statement in violation of 18 USC 1001.

Background

A notice of proposed implementation to establish new procedures to participate in the Department of Defense Personal Property Program was published in the **Federal Register,** 66 FR 56084, Tuesday, November 6, 2001. In response to this notice, the carrier associations and individual carriers and agents submitted numerous comments. The comments were all carefully considered and were the subject of discussion at various meetings. Listed below are the comments and MTMC's response:

Comment 1: Electronic qualification procedures. Could smaller carriers utilize the services of a third party to accomplish the required electronic submission, if necessary? Also there was a comment on declaring Common Financial and/or Administrative Control (CFAC) using the ETOSSS form.

Response: While we prefer carriers to have internal capability to access the Internet, we do not mandate this requirement. A carrier may elect to use a third party vendor to submit qualification documentation electronically via the Internet. The CFAC statement declaring international CFAC and domestic CFAS is on the ETOSSS form.

Comment 2: Application for re-qualification. There was a concern with using the term ''Re-apply'' for qualification for current participants.

Response: We will not use the terminology ''re-apply.'' Instead, we will use ''comply with'' when referring to all current participants. Current carrier participants must comply with all new requirements, as detailed in this document.

Comment 3: MTMC should consider staggering the application process in stages and should consider the impact on the rate cycle to allow carriers to incorporate any additional costs in their rate submission.

Response: We decided to accept electronic applications April 15–May 15, 2002, on a first-come, first-served basis. By doing this, carriers will be able to incorporate any additional expenses in their rates for Winter 2002.

Comment 4: Carriers do not want to be placed in nonuse due to not meeting the new standard, without the opportunity to address the issues.

Response: Once documentation is submitted, we will review them for compliance with our program rules. if we find the company does not meet the minimum requirements, they will not be placed in immediate nonuse and will be afforded the opportunity to address our concerns within 21 calendar days of notification.

Comment 5: Carriers do not want to meet a debt to equity requirement. They cited problems in classifying the purchase of new equipment and being properly credited for when a shipment has been picked up but not delivered, so they could bill.

Response: While we decided to have a Debt to Equity requirement, it is not a pass/fail system. We are allowing for flexibility in the financial ratios, as long as the carrier shows continued improvement, or shows evidence justifying that satisfies MTMC. Additionally, the Debt to Equity requirement was made less stringent (4:1 versus 2:1) and we removed the requirement for a current ratio. The objective is to encourage participating carriers to manage debt in a responsible manner consistent with industry norms.

Comment 6: Carriers did not want to submit copies of their company income tax returns.

Response: We are not requiring copies of the income tax returns, but a carrier may voluntarily provide them in addition to the financial statements, if they so desire.

Comment 7: The $315,000 aggregate limit seems quite high when compared to the $22,500 shipment cargo liability minimum. The likelihood of 14 shipments at risk at one time is remote. The amount per shipment limit of $22,500 would present no problem, as the ''average'' mover in the program carries a $50,000 per shipment limit.

Response: The amount per aggregate minimum of $150,000 will not be increased. The amount per shipment on cargo liability is increased to $22,500.

Comment 8: There were concerns regarding the bond in the Domestic program. The heaviest burden of the bonding costs will fall on carriers that do not perform very many moves per year to recoup the added cost of the bond. This is especially true for intrastate carriers, where there may only be a handful of moves per year within a given state.

Response: The bond is protection for the Government in the event of a carrier's failure to move the shipment. The purpose of this performance bond requirement is to ensure that the DOD is compensated for reprocurement costs caused by the carrier's failure to perform agreed upon services. We excluded intrastate carriers from the bond requirement.

Comment 9: Comments indicated that 5 years company experience was too long and some were against any minimum experience requirement. Also, MTMC's proposal to measure this experience from either the date shown on the operating authority or the date reflected on the Articles of Incorporation does not accomplish measurement of experience. Some suggested incorporating measurement by the experience of personnel.

Response: We want to do business with companies that have already weathered start up costs, etc. However, we reduced the carrier experience requirement to three years. The only way to determine this experience is the date shown on the operating authority or the date reflected on the Articles of Incorporation. We also exempted carriers currently participating from this requirement. In addition, we added the requirement for carriers to continually have two (2) key employees (responsible fro the management of the company) with at least 3 years experience in the movement of household goods.

Comment 10: Carriers are concerned that the information in the SAFER system is not correct.

Response: We plan to still use the SAFER system as a source for information. However, if necessary, the carrier will be given the opportunity to provide documentation that counters those findings for further consideration.

Comment 11: There was a concern regarding the seller of a company being held responsible for a period of time when a company has been sold.

Response: We removed the requirement for the seller to have responsibility after the sale. MTMC will require the new owner to certify their acceptance of the carrier's liabilities and obligations.

Comment 12: Carriers want to submit a combined or consolidated financial statement.

Response: We will only accept stand-alone financial statements in the name of the company that holds the approval. MTMC continues to believe that carriers should qualify on their own strength and merit (*i.e.,* company, can stand independently). However, for reporting purposes, a carrier may submit one document that reflects several companies separate financial information, as long as the financial information is reported on each individual company's name and reflects that company's account information. Each individual company must meet the ratio minimums as detailed in this document. In other words, we want to see the health of the individual companies. MTMC will not accept truly consolidated reports where there is no separation from one company to another.

Paperwork Reduction Act.

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* does not apply because no new information requirements or records keeping responsibilities are imposed on offerors, contractors, or members of the public.

Regulatory Flexibility Act.

This change is related to public contracts and is designed to streamline and strengthen the DOD personal property carrier qualification program. This change is not considered rule-making within the meaning of the Regulatory Flexibility Act, 5, U.S.C. 601–612.

Patricia K. Hunt,

Col. USAF, DCS, Passenger and Personal Property.

[FR Doc. 02–6582 Filed 3–18–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive License of a U.S. Government-Owned Patent

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(I)(i), announcement is made of the intent to grant an exclusive, royalty-bearing, revocable license to U.S. patent application number 09/961,405 filed September 25, 2001, and PCT application number PCT/US01/29848 filed September 25, 2001, entitled ''Critical Care Platform for Litters'' to Impact Instrumentation, Inc. with its principal place of business at 27 Fairfield Pl., West Caldwell, NJ 07006.

ADDRESSES: Commander, U.S. Army Medical Research and Material Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Anyone wishing to object to the grant of this license has to file written objections along with supporting evidence, if any, by April 3, 2002. Written objections are to be filed with the Command Judge Advocate, U.S. Army Medical Research and Materiel Command, 504 Scott Street, Fort Detrick, Maryland 21702–5012.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–6581 Filed 3–18–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to Amend a System of Records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974.

DATES: This proposed action will be effective without further notice on April 18, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 13, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.,

A0600–8 ARPC

SYSTEM NAME:

Individual Ready, Standby, and Retired Reserve Personnel Information System (December 23, 1997, 62 FR 67055).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Members of the U.S. Army Reserve in the categories of Individual Ready Reserve, Standby and Retired Reserve assigned to a reserve unit and not serving on extended active duty in an entitled reserve status.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Military occupational specialty data; qualification records, application for appointments, voluntary reduction; award recommendations, academic reports; retirement points, transcripts of military records efficiency reports; change of name; birth certificates, citizenship statements and status; absence without leave and desertion records; FBI reports; transcripts of military records; waiver of disqualifications, efficiency appeals; promotions, reductions, recommendations, approvals and declinations, announcements, notifications, pay entitlements, and other military service data.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 3013, Secretary of the Army; Army Regulation 135–18, The Active Guard Reserve (AGR) Program; Army Regulation 135–91, Service Obligations, Methods of Fulfillment Participation Requirements and Enforcement Procedures; Army Regulation 135–100, Appointment of Commissioned and Warrant Officers of the Army; Army Regulation 135–133, Ready Reserve Screening Qualification Records System, and Change of Address Reports; Army Regulation 135–155, Promotion of Commissioned Officers and Warrant Officers other than General Officers; Army Regulation 135–75, Separation of Officers; Army Regulation 140–10, Assignments, Attachments, Details and Transfers; Army Regulation 140–111, U.S. Army Reserve Reenlistment Programs; Army Regulation 140–158, Enlisted Personnel Classification, Promotion and Reduction; Army Regulation 140–185, Training and Retirement Point Credits and Unit Level Strength Accounting Records; and E.O. 9397 (SSN).'

* * * * *

STORAGE:

Delete entry and replace with 'Optical digital imagery, computer output microfiche, computer magnetic tapes and discs, selected data stored on platters, disc fiche and electronic storage media.'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Records or maintained in secured buildings and are accessed only by authorized personnel who are trained and cleared for access, in the performance of their duties. Established procedures for the control of computer access are in place and periodically reviewed and updated to prevent unwarranted access.''

RETENTION AND DISPOSAL:

Delete entry and replace with 'Reserve component evaluations, reserve officer promotion eligibility rosters, reserve officer and enlisted centralized and semi-centralized selection board reporting files destroy after 2 years. Reserve enlisted promotion eligibility rosters destroy after 1 year. Reserve officer numerical promotion lists destroy upon separation of soldier or when superseded or obsolete. Active duty for special work files maintain until funds are disbursed or when no longer needed. Reserve officer nominations and confirmation files are permanent. Equivalent training authorization approvals maintain for 5 years then destroy. Reserve officer career management files are forwarded to the appropriate personnel section if, individual transfers within the Army Reserves, enters on active duty or the National Guard, upon final separation from the Army Reserves destroy.''

* * * * *

A0600–8 ARPC

SYSTEM NAME:

Individual Ready, Standby, and Retired Reserve Personnel Information System.

SYSTEM LOCATION:

U.S. Army Reserve Personnel Center, 1 Reserve Way, St. Louis, MO 63132–5200.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the U.S. Army Reserve in the categories of Individual Ready Reserve, Standby and Retired Reserve assigned to a reserve unit and not serving on extended active duty in an entitled reserve status.

CATEGORIES OF RECORDS IN THE SYSTEM:

Military occupational specialty data; qualification records, application for appointments, voluntary reduction; award recommendations, academic reports; retirement points, transcripts of military records efficiency reports; change of name; birth certificates, citizenship statements and status; absence without leave and desertion records; FBI reports; transcripts of military records; waiver of disqualifications, efficiency appeals; promotions, reductions, recommendations, approvals and declinations, announcements, notifications, pay entitlements, and other military service data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 135–18, The Active Guard Reserve (AGR) Program; Army Regulation 135–91, Service Obligations, Methods of Fulfillment Participation Requirements and Enforcement Procedures; Army Regulation 135–100, Appointment of Commissioned and Warrant Officers of the Army; Army Regulation 135–133, Ready Reserve Screening Qualification Records System, and Change of Address Reports; Army Regulation 135–155, Promotion of Commissioned Officers and Warrant Officers other than General Officers; Army Regulation 135–75, Separation of Officers; Army Regulation 140–10, Assignments, Attachments, Details and Transfers; Army Regulation 140–111, U.S. Army Reserve Reenlistment Programs; Army Regulation 140–158, Enlisted Personnel Classification, Promotion and Reduction; Army Regulation 140–185, Training and Retirement Point Credits and Unit Level Strength Accounting Records; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain personnel data on members assigned to individual ready, standby, and retired Army Reserves; to select and order individuals to military active duty training, to identify personnel for promotion; to determine those not qualified for retention in the reserve forces; to issue annual statement of retirement credits; to select qualified members for potential assignment to active Army units and reserve component units in the event of mobilization.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Optical digital imagery, computer output microfiche, computer magnetic tapes and discs, selected data stored on platters, disc fiche and electronic storage media.

RETRIEVABILITY:

By individual's name and Social Security Number.

SAFEGUARDS:

Records or maintained in secured buildings and are accessed only by authorized personnel who are trained and cleared for access, in the performance of their duties. Established procedures for the control of computer access are in place and periodically reviewed and updated to prevent unwarranted access.

RETENTION AND DISPOSAL:

Reserve component evaluations, reserve officer promotion eligibility rosters, reserve officer and enlisted centralized and semi-centralized selection board reporting files destroy

after 2 years. Reserve enlisted promotion eligibility rosters destroy after 1 year. Reserve officer numerical promotion lists destroy upon separation of soldier or when superseded or obsolete. Active duty for special work files maintain until funds are disbursed or when no longer needed. Reserve officer nominations and confirmation files are permanent. Equivalent training authorization approvals maintain for 5 years then destroy. Reserve officer career management files are forwarded to the appropriate personnel section if, individual transfers within the Army Reserves, enters on active duty or the National Guard, upon final separation from the Army Reserves destroy.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Reserve Personnel Center, 1 Reserve Way, St. Louis, MO 63132–5200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army Reserve Personnel Center, 1 Reserve Way, St. Louis, MO 63132–5200.

For verification purposes, individual should provide full name, Social Security Number, current address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Reserve Personnel Center, 1 Reserve Way, St. Louis, MO 63132–5200.

For verification purposes, individual should provide full name, Social Security Number, current address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the Official Military Personnel File and the Military Personnel Records Jacket.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–6545 Filed 3–18–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Supplemental Final Environmental Impact Statement, Portland District, Columbia and Lower Willamette Rivers Federal Navigation Channel Improvements, Oregon and Washington

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps), Portland District, intends to prepare a supplement to the Final Integrated Feasibility Report/Environmental Impact Statement (IFR/EIS Supplement) for the Columbia and Lower Willamette Rivers Federal Navigation Channel, Oregon and Washington. The final IFR/EIS, which was published in 1999, identified a plan of action to deepen the Columbia and Lower Willamette Federal navigation project by 3 feet, and construct ecosystem restoration features. This supplement will address new information that has been developed since the 1999 report, including information that resulted from the Endangered Species Act consultation with National Marine Fisheries Service and US Fish and Wildlife Service and for water quality certification.

The IFR/EIS is being supplemented to add new information that has been generated since the final report in 1999. It will include information from the recently transmitted biological assessment prepared by the Corps for the National Marine Fisheries Service and US Fish and Wildlife Service. Several additional ecosystem restoration features are proposed to be implemented to benefit the recovery of listed threatened and endangered fish. As a result of these actions the lower river disposal plan will be re-evaluated to shift from ocean disposal at the Deep Water disposal site to creation of ecosystem restoration features in the estuary. The construction volumes will also be updated utilizing December 2001 and January 2002 hydrographic surveys. Other items will be updated from a cost perspective due to new information collected since 1999, including a reduction in rock excavation and utility relocations. Project economics will be re-examined to evaluate the sensitivity of the fleet and commodity forecasts in the EIS When the costs and benefits are re-examined the benefit-to-cost ratio will be reevaluated.

The alternatives under consideration are the same as those measures evaluated in the 1999 IFR/EIs. Elements of the plan of action may include dredging of sands, rock removal by mechanical means as well as blasting, disposal of material at in-water, shoreline and upland disposal sites, and ecosystem restoration features. Information updates will include the disposal plan in the lower river, and new ecosystem restoration proposals. This plan will shift disposal material from ocean disposal at the Deep Water disposal site to creation of the restoration features in the estuary.

FOR FURTHER INFORMATION CONTACT: Please contact Mr. Robert E. Willis, Chief, Environmental Resources Branch, US Army Corps of Engineers, Portland District, CENWP–PM–E, PO Box 2946, Portland, OR 92708–2946, phone (503) 808–4760.

SUPPLEMENTARY INFORMATION: The proposed action is being considered under the authority of resolution of the House of Representatives, Committee on Public Works and Transportation, adopted August 3, 1989. The action ultimately may involve some measures similar to those selected in 1999. The Supplement will identify a plan of action which (1) evaluates the specific engineering, environmental, and economic effects of proposed alternatives for improving the authorized channel as compared to the without-project condition (no action alternative); (2) identifies a plan which maximizes National Economic Development (NED) benefits while protecting environmental resources in accordance with Federal laws and statutes; (3) recommends a plan for construction if economic, environmental, and engineering justification is met and the plan is supported by the sponsor. Alternatives being considered to the proposed action are the same as those analyzed in the 1999 report. The Supplement will consider information gained from the expert panel held during the consultation process and data collection for smelt and sturgeon conducted in conjunction with the Federal and State resource agencies. Based on preliminary consideration to date, the following have been some of the significant issues requiring analysis in the Supplement: smelt, sturgeon, Dungeness crab concerns, wetlands and mitigation required due to wetland losses. The Corps welcomes input to the Supplement from affected Federal, State and local agencies, Indian tribes, and other interested organizations and parties. The Environmental Protection

Agency, Region 10, was a cooperating agency to the IFR/EIs, and will also act as a cooperating agency in the Supplement.

The normal range of environmental review and consultation shall apply to the proposed action.

Scoping was completed in 1994. The Corps plans to conduct a series of public meetings after release of the draft Supplement. Meeting times will be announced later. The draft IFR/EIS Supplement is tentatively scheduled for release to the public and agencies for review in May 2002.

Randall J. Butler,

Colonel, EN, Commanding.

[FR Doc. 02–6583 Filed 3–18–02; 8:45 am]

BILLING CODE 3710–AR–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent to Grant Exclusive Patent License; Large Scale Biology, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Large Scale Biology, Inc., a revocable, nonassignable, exclusive license to practice worldwide the Government-owned inventions described in U.S. Patent No. 5, 599,703, entitled ''In Vitro Amplification/Expansion of CD34+ Stem and Progenitor Cells'' issued February 4, 1997, and its PCT serial number US94/12385 in the field of PMVEC/Hematopoietic stem cell co-culture conditioned media system.

DATE: Anyone wishing to object to the grant of this license has fifteen (15) days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with the Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910–7500.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Schlagel, Director, Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910–7500, telephone (301) 319–7428 or E–Mail at *schlagelc@nmrc.navy.mil.*

Dated: March 12, 2002.

T. J. Welsh,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–6528 Filed 3–18–02; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.038, 84.033, and 84.007]

Student Financial Assistance; Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) Programs

ACTION: Notice of deadline dates for request and supporting documents for funding or waivers for the remainder of the 2001–2002 award year.

SUMMARY: The Secretary announces deadline dates for an institution of higher education to submit various requests and documents under the Campus-Based programs for the remainder of the 2001–2002 award year (January 1, 2002 through June 30, 2002). The Department believes it is more customer friendly and helpful for an institution to have one annual notice, rather than several, for an award year.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Coppage, Campus-Based Operations, Student Financial Assistance, U.S. Department of Education, 830 First Street, NE., Washington, DC 20202–5453. Telephone: (202) 377–3174.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format, (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: There are three programs that we refer to as the Campus-Based programs: The Perkins Loan Program encourages institutions to make low-interest, long term loans to needy undergraduate and graduate students to help pay for their cost of education.

The FSEOG Program encourages institutions to provide grants to exceptionally needy undergraduate students to help pay for their cost of education.

The FWS Program encourages the part-time employment of needy undergraduate and graduate students to help pay for their cost of education and encourages these students to participate in community service activities. An institution may use part of its FWS funds to locate and develop jobs for students under the Job Location and Development Program. An eligible institution that meets the definition of a ''Work-College'' may participate in the Work-Colleges Program.

The Federal Perkins Loan, FWS, and FSEOG Programs are authorized by parts E and C, and part A, subpart 3, respectively, of title IV of the Higher Education Act of 1965, as amended.

The Department will still refer to these individual deadline dates in its ''Dear Partner'' Letters that relate to each process we post on the Information for Financial Aid Professionals (IFAP) Web site.

DEADLINE DATES: The following table provides the deadline dates for the Campus-Based programs for the remainder of the current award year. In July 2002 we shall publish a notice for the 2002–2003 award year. Please note that an institution must meet the established deadline dates to ensure consideration for funding or a waiver, as appropriate.

AWARD YEAR 2002

What does an institution submit?	Where does the institution submit this?	What is the deadline for submission?
1. Institutional Application and Agreement for Participation in the Work-Colleges Program for the 2002–2003 award year.	Work-Colleges Program Campus-Based Operations, U.S. Department of Education, 830 First Street, NE., Washington, DC 20202–5453.	April 26, 2002
2. Request for a Waiver of the Minimum Expenditure Requirement for Community Service in the FWS Program for the 2002–2003 award year.	FWS Community Service Waiver Request Campus-Based Operations, U.S. Department of Education, 830 First Street, NE., Washington, DC 20202–5453.	June 28, 2002

Proof of Delivery of Request and Supporting Documents

If you submit your documents by mail or by a non-U.S. Postal Service courier, we accept as proof one of the following:

(1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(2) A legibly dated U.S. Postal Service postmark.

(3) A legibly dated shipping label, invoice, or receipt from a commercial courier.

(4) Other proof of mailing or delivery acceptable to the Secretary.

If the request and documents are sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark or (2) a mail receipt that is not dated by the U.S. Postal Service. An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office. An institution is encouraged to use certified or at least first-class mail.

The Department accepts commercial couriers or hand deliveries between 8 a.m. and 4:30 p.m., Eastern time, Monday through Friday except Federal holidays.

Sources for Detailed Information on these Requests

A more detailed discussion of each request for funds or waiver is provided in a specific ''Dear Colleague'' letter, which is posted on the Department's Web page at least 30 days before the established deadline date for the specific request. Information on these items is also found in the Federal Student Financial Aid Handbook.

Applicable Regulations: The following regulations apply to these programs:

(1) Student Assistance General Provisions, 34 CFR part 668.

(2) General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 673.

(3) Federal Perkins Loan Program, 34 CFR part 674.

(4) Federal Work-Study Program, 34 CFR part 675.

(5) Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 676.

(6) Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600.

(7) New Restrictions on Lobbying, 34 CFR part 82.

(8) Governmentwide Debarment and Suspension Nonprocurement and Government Requirement for Drug-Free Workplace (Grants), 34 part 85.

(9) Drug-Free Schools and Campuses, 34 CFR part 86.

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To use the PDF you must have the Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gov/nara/index.html*

Program Authority: 20 U.S.C. 1087aa *et seq.*; 42 U.S.C. 2751 *et seq.*; and 20 U.S.C. 1070b *et seq.*

Dated: March 13, 2002.

Greg Woods,

Chief Operating Officer, Office of Student Financial Assistance.

[FR Doc. 02–6548 Filed 3–18–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.069]

Student Financial Assistance; Leveraging Educational Assistance Partnership and Special Leveraging Educational Assistance Partnership Programs

AGENCY: Department of Education.

ACTION: Notice of the closing date for receipt of State applications for Award Year 2002–2003 funds.

SUMMARY: This is a notice of the closing date for receipt of State applications for Award Year 2002–2003 funds under the Leveraging Educational Assistance Partnership (LEAP) and Special Leveraging Educational Assistance Partnership (SLEAP) programs.

The LEAP and SLEAP programs, authorized under Title IV, Part A, Subpart 4 of the Higher Education Act of 1965 as amended (HEA), assist States in providing aid to students with substantial financial need to help them pay for their postsecondary education costs through matching formula grants to States. Under section 415C(a) of the HEA, a State must submit an application to participate in the LEAP and SLEAP programs through the State agency that administered its LEAP Program as of July 1, 1985, unless the Governor of the State has subsequently designated, and the Department has approved, a different State agency to administer the LEAP Program.

DATES: To receive an allotment under the LEAP and SLEAP programs for Award Year 2002–2003, applications submitted electronically must be received by 11:59 p.m. (Eastern time) May 31, 2002. Paper applications must be received by May 24, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Gerrans, LEAP Program Manager, Financial Partners, U.S. Department of Education, Student Financial Assistance, 830 First Street, NE., Room 111H1, Washington, DC 20202. Telephone: (202) 377–3304.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Individuals with disabilities also may obtain a copy of the application in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

SUPPLEMENTARY INFORMATION: Only the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands may submit an application for funding under the LEAP and SLEAP programs.

State allotments for each award year are determined according to the statutorily mandated formula under section 415B of the HEA and are not negotiable. A State may also request its share of reallotment, in addition to its basic allotment, which is contingent upon the availability of such additional funds.

In Award Year 2001–2002, 47 States, the District of Columbia, Guam, Northern Mariana Islands, Puerto Rico, and the Virgin Islands received funds under the LEAP Program. Additionally, 37 States, the District of Columbia, Guam, Northern Mariana Islands, Puerto Rico, and the Virgin Islands received funds under the SLEAP Program.

On-Line Application Submitted Electronically

The Financial Partners Channel within Student Financial Assistance has automated the LEAP and SLEAP application process in the Financial Management System (FMS). Applicants are strongly encouraged to use the web-based form (Form 1288–E OMB 1845–0028) which is available on the FMS LEAP on-line system at the following Internet address: *http://fms.sfa.ed.gov.*

Paper Application Delivered by Mail

States or territories may request a paper version of the application (Form 1288 OMB 1845–0028) by calling Mr. Greg Gerrans, LEAP Program Manager, at (202) 377–3304. A paper version will be mailed to you. An application sent by mail must be addressed to: Mr. Greg Gerrans, LEAP Program Manager, Financial Partners, U.S. Department of Education, Student Financial Assistance, 830 First Street, NE., Room 111H1, Washington, DC 20202.

The Department of Education encourages applicants that are completing a paper application to use certified or at least first-class mail when sending the application by mail to the Department. Applications that are mailed must be received by the Department no later than May 24, 2002.

A late applicant cannot be assured that its application will be considered for Award Year 2002–2003 funding.

Paper Applications Delivered by Hand

Applications that are hand-delivered must be delivered to Mr. Greg Gerrans, LEAP Program Manager, Financial Partners, U.S. Department of Education, Student Financial Assistance, 830 First Street, NE., Room 111H1, Washington, DC. Hand-delivered applications will be accepted between 8:00 a.m. and 4:30 p.m. daily (Eastern time), except Saturdays, Sundays, and Federal holidays.

Applications that are hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Applicable Regulations

The following regulations are applicable to the LEAP and SLEAP programs:

(1) The LEAP and SLEAP Program regulations in 34 CFR part 692.

(2) The Student Assistance General Provisions in 34 CFR part 668.

(3) The Regulations Governing Institutional Eligibility in 34 CFR part 600.

(4) The Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.60 through 75.62 (Ineligibility of Certain Individuals to Receive Assistance), part 76 (State-Administered Programs), part 77 (Definitions that Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 82 (New Restrictions on Lobbying), part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)), part 86 (Drug-Free Schools and Campuses) and part 99 (Family Educational Rights and Privacy Act).

Electronic Access to This Document

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1070c *et seq.*

Dated: March 13, 2002.

Greg Woods,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 02–6549 Filed 3–18–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 02–22; Integrated Assessment of Climate Change Research

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces interest in receiving applications for the Integrated Assessment of Climate Change Research Program. This notice is a follow on to previous notices published in the **Federal Register**. The program funds research that contributes to integrated assessment of climate change, and in particular, research to develop and improve methods and tools that focus on specialized topics of importance to integrated assessments. The research program supports the Administration's Climate Change Research activities and the U.S. Global Change Research Program goals to understand, model, and assess the effects of increasing greenhouse gas concentrations in the atmosphere. The program supports research to evaluate the economic costs and predicted responses to options that would mitigate the long-term increase in carbon dioxide and other greenhouse gases.

DATES: Applicants are encouraged (but not required) to submit a brief preapplication for programmatic review. Early submission of preapplications is suggested to allow time for meaningful dialogue.

The deadline for receipt of formal applications is 4:30 p.m., E.D.T., May 14, 2002, to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2002 and early Fiscal Year 2003.

ADDRESSES: Preapplications, referencing Program Notice 02–22, should be sent E-mail to *john.houghton@science.doe.gov.*

Formal applications, referencing Program Notice 02–22, should be sent to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 02–22. This address must also be used when submitting applications by U.S. Postal Service Express Mail or any other commercial overnight delivery service, or when hand-carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. John Houghton, Environmental Sciences Division, SC–74, Office of Biological and Environmental Research, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–8288, E-mail: *john.houghton@science.doe.gov,* fax: (301) 903–8519. The full text of Program Notice 02–22, is available via the World Wide Web using the following web site address: *http://www.science.doe.gov/production/grants/grants.html.*

SUPPLEMENTARY INFORMATION: An integrated assessment of climate change is defined here as the analysis of the human (including economics), physical, and biological aspects of climate change from the cause, such as greenhouse gas emissions, through impacts, such as changes to unmanaged ecosystems, sea level rise, and altered growing conditions for crops. The primary

emphasis is to represent all three aspects in such a way that actions to mitigate climate change may be evaluated. Integrated assessments are commonly based on predictions using a computer model.

A description of integrated assessment may be found in volume 3 of the report ''Intergovernmental Panel on Climate Change (IPCC) Third Assessment Report: Climate Change 2001''. The reference is: Ferenc Toth, Mark Mwandosya, John Christiansen, Jae Edmonds, Brian Flannery, Carlos Gay-Garcia, Hoesung Lee, Klaus Meyer-Abich, Elena Nikitina, Atiq Rahman, Richard Richels, Ye Riqui, Arturo Villavicencio, Yoko Wake, and John Weyant, ''Decision-Making Frameworks,'' Chapter 10 in *Climate Change 2001: Mitigation,* Cambridge University Press, 2001, (http://www.ipcc.ch/pub/reports.htm). A Special Issue of The Energy Journal entitled ''The Costs of the Kyoto Protocol: A Multi-Model Evaluation'', 1999, [ISSN 0195–6574] presents analyses from several integrated assessment models of predicted costs to meet various target emission scenarios. The web site for the Energy Modeling Forum *(http://www.stanford.edu/group/EMF/home/index.htm)* contains further background information.

The policy community uses integrated assessment models to evaluate specific policy options. This notice solicits research intended to provide a sound scientific foundation for predicting and analyzing benefits and costs of climate change, and possible policy options to mitigate it, some of which are not measured monetarily. The research funded as a result of this solicitation will be judged in part on its potential to develop and improve methods and models needed to support policy development. Policy analysis itself will not be funded.

The program will concentrate support on the topics described below. Applications that involve development of analytical models and computer codes will be judged partly on the basis of whether they include proposed tasks to document and make the models and model codes available to the community. The following is a list of topics that are high priority. Topics proposed by principal investigators that fall outside this list will need strong justification to be considered for funding. Research projects in these elements are intended to fill critical gaps in current integrated assessments.

A. Technology Innovation and Diffusion

This is a primary focus of the Integrated Assessment of Climate Change Research Program. Assumptions regarding technology innovation and diffusion are some of the most important contributors to overall uncertainty in predicting future emissions of greenhouse gases. A key area of interest is research to improve the ability of the integrated assessment models to represent technological change as a function of variables that are determined by the model (''endogenizing technological change'') rather than postulated as static input to the model.

One particular difficulty in modeling technological change is in representing the penetration of new technologies. Over the 21st century, the typical timeframe of the integrated assessment models, technologies need to be invented, innovated upon, and diffused to the sectors in which they are used. Several questions need to be addressed, such as: How rapidly do these technological changes take place? What influences the rates? If the model assigns a price for a new technology that is lower than competing technologies, how should the dynamic adoption of the technology be modeled? What can be learned from historical precedents that would lead to better understanding of the processes and therefore to better modeling?

The rate and nature of technology diffusion from the more-developed nations to developing nations is not well understood. Predicting economic structural change in developing nations is also problematical. Much of the uncertainty in integrated assessment models comes from the difficulty in predicting the response of the energy sector and greenhouse gas emissions in developing nations to both regulation and technological innovations in more-developed nations. How can historical precedents be used to understand and model the future movement of technologies across national borders?

This research will help provide tools to address other policy-relevant questions such as the following, as they relate to greenhouse gas emissions:

What effect would various policy options have on ''carbon leakage'', the movement of emissions of greenhouse gases away from nations with relatively regulated emissions to ones with relatively unregulated emissions?

How can the impact of research and development on invention, innovation, and adoption be simulated and modeled quantitatively?

How do innovation and/or diffusion relate to measurable parameters of research and development, such as public and private research and development, investments, or regulations?

B. Evaluation of Scenarios Used to Drive Integrated Assessment Models

The Intergovernmental Panel on Climate Change recently published a Special Report on Emission Scenarios (SRES) (http://www.ipcc.ch/pub/reports.htm#sprep). These scenarios describe various possible directions for future development and are used as input into the Integrated Assessment models. The scenarios include projections of economic growth, population dynamics, and technology development that vary by time and locale.

This notice solicits research to evaluate the existing SRES scenarios. Some combinations of values, for instance high per capita income growth and high population growth, are less likely than other combinations. Research should investigate which combinations of values are important enough to be represented by a particular scenario. The research would investigate whether the scenarios selected by the SRES adequately represent the underlying uncertainty. Would it be beneficial to add scenarios or is it possible to reduce the number? Research into demography per se, such as population dynamics and predictions of age distribution, is not being solicited. The research proposed under this topic should rely primarily on existing demographic data and evaluate that data in the context of demographic scenarios used in integrated assessment.

Program Funding

It is anticipated that up to $1,000,000 will be available for multiple awards to be made in Fiscal Year 2002 and early Fiscal Year 2003 in the categories described above, contingent on the availability of appropriated funds. Applications may request project support up to three years, with out-year support contingent on the availability of funds, progress of the research and programmatic needs. Annual budgets are expected to range from $30,000 to $150,000 total costs. Funds for this research will come from the Integrated Assessment Research program.

Collaboration

Applicants are encouraged to collaborate with researchers in other institutions, such as: universities, industry, non-profit organizations, federal laboratories and Federally

Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories, where appropriate, and to include cost sharing and/or consortia wherever feasible. Additional information on collaboration is available in the Application Guide for the Office of Science Financial Assistance Program that is available via the World Wide Web at: *http://www.science.doe.gov/production/grants/Colab.html.*

Preapplications

A brief preapplication is strongly encouraged (but not required) prior to submission of a full application. The preapplication should identify on the cover sheet the institution, Principal Investigator name, address, telephone, fax and E-mail address, title of the project, and proposed collaborators. The preapplication should consist of a one to two page narrative describing the research project objectives and methods of accomplishment. These will be reviewed relative to the scope and research needs of the Integrated Assessment of Climate Change Research Program. Please note that notification of a successful preapplication is not an indication that an award will be made in response to the formal application.

Merit Review

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project,
2. Appropriateness of the Proposed Method or Approach,
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources,
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors, such as the relevance of the proposed research to the terms of the announcement and the agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: *http://www.science.doe.gov/production/grants/grants.html.* DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

The research project description must be 15 pages or less, exclusive of attachments and must contain an abstract or summary of the proposed research. All collaborators should be listed with the abstract or summary. On the grant face page, form DOE F 4650.2, in block 15, also provide the PI's phone number, fax number, and E-mail address. Attachments include curriculum vitae, a listing of all current and pending federal support and letters of intent when collaborations are part of the proposed research. Curriculum vitae should be submitted in a form similar to that of NIH or NSF (two to three pages), see for example: *http://www.nsf.gov/bfa/cpo/gpg/fkit.htm#forms-9.*

Related Funding Opportunities: Investigators may wish to obtain information about the following related funding opportunities:

National Oceanic and Atmospheric Administration (NOAA)

Within the context of its Human Dimensions of Global Change Research Program, the Office of Global Programs of the National Oceanic and Atmospheric Administration will support research that identifies and analyzes how social and economic systems are currently influenced by fluctuations in climate, and how human behavior can be (or why it may not be) affected based on information about variability in the climate system. The program is particularly interested in learning how advanced climate information on seasonal to yearly time scales, as well as an improved understanding of current coping mechanisms, could be used for reducing vulnerability and providing for more efficient adjustment to these variations. Notice of this program is included in the Program Announcement for NOAA's Climate and Global Change Program, which is published each spring in the **Federal Register**. The deadline for proposals to be considered in Fiscal Year 2002, is expected to be in summer 2002. Information will also be available on our website: *http://www.ogp.noaa.gov/mpe/csi/econhd/index.htm.* For further information, contact: Nancy Beller-Simms Office of Global Programs; National Oceanic and Atmospheric Administration; 1100 Wayne Ave., Suite 1225; Silver Spring, MD 20910; telephone: (301) 427–2089, ext. 180; Internet: *nancy.beller-simms@ogp.noaa.gov* or Caitlin Simpson; Office of Global Programs; National Oceanic and Atmospheric Administration; 1100 Wayne Ave., Suite 1225; Silver Spring, MD 20910; telephone: (301) 427–2089, ext. 152; Internet: *simpson@ogp.noaa.gov.*

National Science Foundation (NSF)

As in Fiscal Year 2001, NSF will support research and related activities associated with the dynamics of coupled natural and human systems through its Biocomplexity special competition. The Biocomplexity 2002 announcement can be accessed at *http://www.nsf.gov/pubs/2002/nsf02010/nsf02010.html.* The deadline for submission of proposals for the Fiscal Year 2002, competition was January 24, 2002. NSF staff expect the competition to continue in future fiscal years, although deadlines may be earlier in the fiscal year and the focus may change somewhat. (The Fiscal Year 2003 deadline may be as early as October 2002.) Potential applicants should consult the NSF Web site for updates.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC, March 11, 2002.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–6547 Filed 3–18–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–669–000]

Bayswater Peaking Facility, LLC; Notice of Issuance of Order

March 12, 2002.

Bayswater Peaking Facility, Inc. (Bayswater) submitted for filing a rate schedule under which Bayswater will engage in the sales of energy, capacity and ancillary services at market-based rates. Bayswater also requested waiver of various Commission regulations. In particular, Bayswater requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Bayswater.

On February 27, 2002, pursuant to delegated authority, the Director, Office

of Markets, Tariffs and Rates-East, granted requests for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Bayswater should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Bayswater is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Bayswater, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Bayswater's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is March 29, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Magalie R. Salas,

Secretary.

[FR Doc. 02–6436 Filed 3–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–795–000]

Duke Energy Washington, LLC; Notice of Issuance of Order

March 13, 2002.

Duke Energy Washington, LLC (Duke Washington) submitted for filing a rate schedule under which Duke Washington will engage in the wholesale sale of electric energy, capacity and certain ancillary services at market-based rates and for the sale, assignment or transfer of transmission capacity. Duke Washington also requested waiver of various Commission regulations. In particular, Duke Transmission requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Duke Washington.

On March 11, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-Central, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Duke Washington should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Duke Washington is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Duke Washington, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Duke Washington's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 10, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Magalie R. Salas,

Secretary.

[FR Doc. 02–6561 Filed 3–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–103–000]

Florida Gas Transmission Company; Notice of Abandonment Application

March 13, 2002.

On March 5, 2002, Florida Gas Transmission Company (Florida), 1400 Smith Street, Houston, Texas 77002, filed an application in Docket No. CP02–103–000 pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon, by sale to Crosstex Energy Services, Ltd. (Crosstex), the South of MOPS Facilities, consisting of 70.25 miles of 20-inch diameter pipeline, Florida's Compressor Station No. 2 (consisting of two units for a total of 4,000 horsepower), and various measurement facilities with appurtenances, all located in San Patricio, Refugio, and Nueces Counties Texas. The application also requests that the Commission determine that, upon abandonment and sale of such facilities, the South of MOPS Facilities will be intrastate transportation facilities under section 2(16) of the NGPA, and exempt from jurisdiction of the Commission under the NGA, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' from follow the instructions (call (202)208–2222 for assistance).

Any questions regarding this application should be directed to Stephen T. Veatch, Director of Certificates & Regulatory Reporting, Florida Gas Transmission Company, P.O. Box 1188, Houston, Texas 77251, at (713) 853–6549 or Frazier King, Senior Counsel at (713) 853–7228.

There are two ways to become involved in the Commission's review of this abandonment. First, any person wishing to obtain legal status by becoming a party to the proceedings for this abandonment should, on or before April 3, 2002, file with the Federal

Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this abandonment. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the abandonment provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this abandonment should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying abandonment will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–6559 Filed 3–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1149–001]

ISO New England Inc.; Notice of Filing

March 13, 2002.

Take notice that on March 12, 2002, ISO New England Inc. submitted an amendment to its February 27, 2002 Market Rule filing in the above docket.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: March 20, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–6563 Filed 3–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–309–000 and ER02–309–001]

MEP Clarksdale Power, LLC; Notice of Issuance of Order

March 13, 2002.

MEP Clarksdale Power, LLC (MEP Clarksdale) submitted for filing a rate tariff under which MEP Clarksdale will engage in the sales of energy and capacity at market-based rates. MEP Clarksdale also requested waiver of various Commission regulations. In particular, MEP Clarksdale requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by MEP Clarksdale.

On March 11, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-Central, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by MEP Clarksdale should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, MEP Clarksdale is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of MEP Clarksdale, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of MEP Clarksdale's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 10, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm*

(call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

Magalie R. Salas,

Secretary.

[FR Doc. 02–6560 Filed 3–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Soda Project No. 20–019, Grace-Cove Project No. 2401–007, Oneida Project No. 472–017]

PacifiCorp—Bear River Projects, Caribou and Franklin Counties, Idaho; Notice

March 13, 2002.

John Ramer, of the Commission's Office of Energy Projects, (202) 219–2833, has been assigned to assist with any questions that may involve the merits of the projects in the above-captioned proceedings. He has been separated from, and will not participate as, advisory staff in these proceedings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–6564 Filed 3–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–814–000]

Thoroughbred Generation Company, LLC; Notice of Issuance of Order

March 13, 2002.

Thoroughbred Generation Company, LLC (TCC) submitted for filing a rate schedule under which TCC will engage in the sales of energy and capacity at market-based rates. TCC also requested waiver of various Commission regulations. In particular, TCC requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by TCC.

On March 11, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-Central, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by TCC should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, TCC is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of TCC, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of TCC's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 10, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

Magalie R. Salas,

Secretary.

[FR Doc. 02–6562 Filed 3–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–99–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

March 13, 2002.

Take notice that on February 28, 2002, Transcontinental Gas Pipe Line Corporation (Transco), 2800 Post Oak Blvd., Houston, Texas 77056, through its agent, Williams Energy Marketing & Trading Company (Williams) (formerly Williams Energy Services Company), One Williams Center, Suite 4100, Tulsa, Oklahoma 74172, tendered for filing an abbreviated application for authority pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) and Part 157 of the Federal Energy Regulatory Commission's Regulations, to abandon a portion of its existing individually certificated Rate Schedule FS service for Eastern Shore Natural Gas Company (Eastern Shore) and to assign a portion of the abandoned Rate Schedule FS service to two customers of Eastern Shore, all as more fully set forth in the application , which is on file and open to public inspection. Transco further asserts that no abandonment of any facility is proposed. The application may be viewed on the Web at *www.ferc.gov using the ''RIMS''* link, select ''Docket #'' from the RIMS menu and follow the instructions (call (202) 208–2222 for assistance).

Any person desiring to be heard or to protest these filings should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, by or before April 3, 2002, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public reference Room.Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-filing'' link.

Any question concerning this application should be directed to Mr. David Richins, Williams Energy Marketing & Trading Company, One Williams Center, Suite 4100, Tulsa, Oklahoma 74172 at (918) 573–1469.

Take notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no protest or motion to intervene is filed within the time required herein. At that time, the Commission, on its own review of matter, will determine whether granting the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own

motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transco to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–6558 Filed 3–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–102–000, et al.]

Bastrop Energy Partners. L.P., et al.; Electric Rate and Corporate Regulation Filings

March 12, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. Bastrop Energy Partners, L.P.

[Docket No. EG02–102–000]

Take notice that on March 8, 2002, Bastrop Energy Partners, L.P. (the Applicant), with its principal office at 125 Old Bastrop Highway, Cedar Creek, Texas 78612, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant states that it is a Delaware limited partnership engaged directly and exclusively in the business of constructing and operating an approximately 536 MW gas-fired generating facility to be located in Bastrop County, Texas. Electric energy produced by the facility will be sold at wholesale or at retail exclusively to foreign consumers.

Comment Date: April 1, 2002.

1. Soyland Power Cooperative, Inc.

[Docket No. ER02–598–001]

Take notice that on March 6, 2002, Soyland Power Cooperative, Inc. (Soyland) tendered for filing with the Federal Energy Regulatory Commission (the Commission) a revised Schedule A, designated as Supplement No. 5 to its Rate Schedules, in the format required by the Commission's Order No. 614. The filing was made in compliance with the Commission's letter order dated February 5, 2002.

Comment Date: March 27, 2002.

2. Duke Energy Hot Spring, LLC

[Docket No. ER02–694–001]

Take notice that on March 6, 2002, Duke Energy Hot Spring, LLC (Duke Energy Hot Spring) tendered for filing with the Federal Energy Regulatory Commission (Commission), a notice of status change in connection with the Commission's order authorizing a change in upstream control of Engage Energy America LLC and Frederickson Power L.P. resulting from a transaction involving Duke Energy Corporation and Westcoast Energy Inc. (98 FERC ¶ 61207(2002)).

Copies of the filing were served upon all parties on the official service list in this proceeding.

Comment Date: March 27, 2002.

3. RWE Trading Americas Inc.

[Docket No. ER02–1252–000]

Take notice that on March 5, 2002, RWE Trading Americas Inc. (RWE Trading) filed with the Commission for acceptance RWE Trading's admission as a member in the Western Systems Power Pool (WSPP). In addition, RWE Trading requests a Commission order granting an amendment to the WSPP Agreement to include RWE Trading as a participant.

A March 6, 2002 effective date has been requested.

RWE Trading states that copies of this filing were sent to the members of the WSPP Executive Committee and the General Counsel to the WSPP.

Comment Date: March 26, 2002.

4. Northeast Utilities Service Company

[Docket No. ER02–1253–000]

Take notice that on March 5, 2002, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement to provide Firm Point-To-Point Transmission Service to AES New Energy, Inc. under the NU System Companies' Open Access Transmission Service Tariff No. 9.

NUSCO states that a copy of this filing has been mailed to AES New Energy, Inc.

NUSCO requests that the Service Agreement become effective March 29, 2002.

Comment Date: March 26, 2002.

5. Commonwealth Edison Company

[Docket No. ER02–1254–000]

Take notice that on March 5, 2002, Commonwealth Edison Company (ComEd) submitted for filing an executed Service Agreement for Short-Term Firm Point-to-Point Transmission Service (Service Agreement) and the associated executed Dynamic Scheduling Agreement (DSA) with Exelon Generation Company, LLC (Exelon) under ComEd's Open Access Transmission Tariff (OATT). The executed Service Agreement and associated executed DSA replace the unexecuted Service Agreement and unexecuted DSA between ComEd and Exelon which were previously filed with the Commission on February 28, 2002, designated as Docket No. ER02–1183–000.

ComEd requests an effective date of March 1, 2002 for both the executed Service Agreement and the associated executed DSA, which is the same effective date that ComEd requested for the unexecuted Service Agreement and associated unexecuted DSA with Exelon filed in Docket No. ER02–1183–000. Accordingly, ComEd requests waiver of the Commission's notice requirements.

A copy of this filing was served on Exelon and ORMET Corporation.

Comment Date: March 26, 2002.

6. PPL Electric Utilities Corporation

[Docket No. ER02–1255–000]

Take notice that on March 5, 2002, PPL Electric Utilities Corporation (PPL Electric) and Citizens' Electric Company of Lewisburg (Citizens' Electric) filed an Interconnection Agreement between PPL Electric and Citizens' Electric.

PPL Electric and Citizens' Electric request an effective date of February 1, 2002 for the Interconnection Agreement.

Comment Date: March 26, 2002.

7. Hermiston Power Partnership

[Docket No. ER02–1257–000]

Take notice that on March 5, 2002, Hermiston Power Partnership (the Applicant) tendered for filing, under section 205 of the Federal Power Act, a request for authorization to make wholesale sales of electric energy, capacity and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights. Applicant proposes to own and operate a 546 megawatt electric generation facility located in Umatilla County, Oregon. Applicant also submitted for filing a power marketing agreement for which it requests privileged and confidential treatment.

Comment Date: March 26, 2002.

8. New England Power Company

[Docket No. ER02–1259–000]

Take notice that on March 6, 2002, New England Power Company (NEP), on behalf of Massachusetts Electric Company, submitted for filing Original Service Agreement No. 211 for service under NEP's Open Access Transmission Tariff, FERC Electric Tariff, Second

Revised Volume No. 9 between NEP and Paxton Municipal Light Department.

NEP states that a copy of this filing has been served upon Paxton and regulators in the State of Massachusetts.

Comment Date: March 27, 2002.

9. Michigan Electric Transmission Company

[Docket No. ER02–1260–000]

Take notice that on March 6, 2002, Michigan Electric Transmission Company (METC) tendered for filing executed Service Agreements for Network Transmission Service (Agreements) with Nicor Energy, L.L.C. and Wolverine Power Marketing Cooperative (Customers) pursuant to the Joint Open Access Transmission Service Tariff filed on February 22, 2001 by Michigan Transco and International Transmission Company (ITC). The Service Agreements being filed are Nos. 155 and 156 under that tariff.

METC is requesting effective dates of March 1, 2002 and February 4, 2002, respectively, for the Agreements. Copies of the Agreements were served upon the Michigan Public Service Commission, ITC and the Customers.

Comment Date: March 27, 2002.

10. Vermont Electric Power Company, Inc.

[Docket No. ER02–1261–000]

Take notice that on March 5, 2002, Vermont Electric Power Company, Inc. (VELCO) filed a revised transmission agreement among VELCO, the electric utilities serving the state of Vermont and the Vermont Department of Public Service, designated by the Commission as VELCO's FERC Rate Schedule No. 246.

VELCO seeks an effective date of May 1, 2002 for the revised transmission agreement and, accordingly, seeks waiver of the Commission's notice requirements to the extent necessary. Copies of the filing have been served on all customers under the agreement and on the Vermont Public Service Board.

Comment Date: March 26, 2002.

11. Southwest Reserve Sharing Group

[Docket No. ER02–1262–000]

Take notice that on March 6, 2002, Tucson Electric Power Company tendered for filing on behalf of the members of the Southwest Reserve Sharing Group an amendment to the Southwest Reserve Sharing Group Participation Agreement.

Comment Date: March 27, 2002.

12. Cabrillo Power I LLC, Cabrillo Power II LLC

[Docket No. ER02–1264–000]

Take notice that on March 5, 2002, Cabrillo Power I LLC and Carbillo Power II LLC tendered for filing with the Federal Energy Regulatory Commission (Commission) an informational filing and other revisions to their Reliability Must-Run Service Agreements with the California Independent System Operator Corporation.

A copy of the filing has been served on the California Independent System Operator Corporation, the California Electricity Oversight Board and San Diego Gas & Electric Company.

Comment Date: March 26, 2002.

13. Entergy Services, Inc.

[Docket No. ER02–1265–000]

Take notice that on March 7, 2002, Entergy Services, Inc., on behalf of Entergy Gulf States, Inc., tendered for filing an unexecuted Interconnection and Operating Agreement with Calcasieu Development Company, L.L.C. (Enron Calcasieu), and a Generator Imbalance Agreement with Enron Calcasieu.

Comment Date: March 28, 2002.

14. Niagara Mohawk Power Corporation

[Docket No. ER02–1266–000]

Take notice that on March 6, 2002, Niagara Mohawk Power Corporation, a National Grid Company (Niagara Mohawk) tendered for filing its First Amended and Restated Rate Schedule FERC No. 204 with the Power Authority of the State of New York (the Power Authority).

Copies of the filing have been served on counsel for the City of Jamestown Board of Public Utilities, the Power Authority, the New York Independent System Operator, Inc., the New York State Public Service Commission, the New York State Electric Cooperative Association and the Municipal Electric Utilities Association of New York.

Comment Date: March 27, 2002.

15. Desert Power, L.P.

[Docket No. ER02–1267–000]

Take notice that on March 4, 2002, Desert Power, L.P. tendered for filing Service Agreement No. 3, Original Volume 1 with Northern States Power Company effective January 30, 2002.

Comment Date: March 25, 2002.

16. Desert Power, L.P.

[Docket No. ER02–1268–000]

Take notice that on March 4, 2002, Desert Power, L.P. tendered for filing Service Agreement No. 2, Original Volume 1 with Public Company of Colorado, effective date January 30, 2002.

Comment Date: March 25, 2002.

17. The Dayton Power and Light Company

[Docket No. ER02–1269–000]

Take notice that on March 5, 2002, The Dayton Power and Light Company (Dayton) submitted to the Federal Energy Regulatory Commission (Commission) service agreements The Dayton Power and Light Company Energy Services Department as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Dayton also requests waiver of the Commission's notice requirements. Copies of this filing were served upon The Dayton Power and Light Company Energy Services Department and the Public Utilities Commission of Ohio.

Comment Date: March 26, 2002.

18. Northeast Utilities Service Company

[Docket No. ER02–1270–000]

Take notice that on March 5, 2002, Northeast Utilities Service Company (NUSCO), tendered for filing, Service Agreement to provide Firm Point-To-Point Transmission Service to AES New Energy, Inc. under the NU System Companies' Open Access Transmission Service Tariff No. 9.

NUSCO requests that the Service Agreement become effective March 29, 2002.

NUSCO states that a copy of this filing has been mailed to AES New Energy, Inc.

Comment Date: March 26, 2002.

19. Cinergy Services, Inc.

[Docket No. ER02–1271–000]

Take notice that on March 6, 2002, Cinergy Services, Inc. (Cinergy) and Conoco Power Marketing, Inc., are requesting a cancellation of Service Agreement No 110, under Cinergy Operating Companies, FERC Market-Based Power Sales, FERC Electric Tariff Original Volume No. 7.

Cinergy requests an effective date of October 29, 1997.

Comment Date: March 27, 2002.

20. Cinergy Services, Inc.

[Docket No. ER02–1272–000]

Take notice that on March 6, 2002, Cinergy Services, Inc. (Cinergy) and Conoco Power Marketing, L.L.C. requested a cancellation of Service Agreement No. 33 under Cinergy Operating Companies, FERC Electric

Resale of Transmission Rights and Ancillary Service Rights, FERC Electric Tariff Original Volume No. 8.

Cinergy requests an effective date of February 27, 2002.

Comment Date: March 27, 2002.

21. Cinergy Services, Inc.

[Docket No. ER02–1273–000]

Take notice that on March 6, 2002, Cinergy Services, Inc. (Cinergy) and Conoco Power Marketing, Inc. are requesting a cancellation of Service Agreement No 110, under Cinergy Operating Companies, FERC Cost-Based Power Sales, FERC Electric Tariff Original Volume No. 6.

Cinergy requests an effective date of October 29, 1997.

Comment Date: March 27, 2002.

22. Cinergy Services, Inc.

[Docket No. ER02–1274–000]

Take notice that on March 6, 2002, Cinergy Services, Inc. (Cinergy) tendered for filing a Notice of Name Change from Aquila Energy Marketing Corporation to Aquila Merchant Services, Inc. Cinergy respectfully requests waiver of notice to permit the Notice of Name Change to be made effective as of the date of the Notice of Name Change.

A copy of the filing was served upon Aquila Merchant Services, Inc.

Comment Date: March 27, 2002.

23. Florida Power & Light Company

[Docket No. ER02–1275–000]

Take notice that on March 6, 2002, Florida Power & Light Company tendered for filing with the Federal Energy Regulatory Commission a letter of agreement with El Paso Merchant Energy as a service agreement under its Open Access Transmission Tariff. A copy of the filing has been served on El Paso Merchant Energy and the Florida Public Service Commission.

Comment Date: March 27, 2002.

24. Illinois Power Company

[Docket No. ER02–1276–000]

Take notice that on March 6, 2002, Illinois Power Company (Illinois Power), filed a First Revised Interconnection Operating Agreement entered into with Piatt Midwest Statutory Trust II, assignee of Aquila Piatt County Power, L.L.C., and subject to Illinois Power's Open Access Transmission Tariff.

Illinois Power requests an effective date of February 12, 2002 for the First Revised Interconnection Agreement and seeks a waiver of the Commission's notice requirement. Illinois Power has served a copy of the filing on Piatt Midwest Statutory Trust II.

Comment Date: March 27, 2002.

25. Central Maine Power Company

[Docket No. ER02–1277–000]

Take notice that on March 7, 2002, Central Maine Power Company (Central Maine) filed with the Federal Energy Regulatory Commission (Commission), pursuant to Section 205 of the Federal Power Act, an executed S.D. Warren Somerset Entitlement Agreement. In addition, Central Maine requested confidential treatment for certain competitively sensitive material contained in the agreement.

Comment Date: March 28, 2002.

26. Michigan Electric Transmission Company

[Docket No. ER02–1278–000]

Take notice that on March 7, 2002, Michigan Electric Transmission Company (METC) tendered for filing executed Service Agreements for Network Transmission Service (Agreements) with Nicor Energy, L.L.C. and Wolverine Power Marketing Cooperative (Customers) pursuant to the Joint Open Access Transmission Service Tariff filed on February 22, 2001 by Michigan Transco and International Transmission Company (ITC). The Service Agreements being filed are Nos. 155 and 156 under that tariff.

METC is requesting effective dates of March 1, 2002 and February 4, 2002, respectively, for the Agreements. Copies of the Agreements were served upon the Michigan Public Service Commission, ITC and the Customers.

Comment Date: March 28, 2002.

27. West Texas Utilities Company

[Docket No. ER02–1279–000]

Take notice that on March 7, 2002, West Texas Utilities Company (WTU) submitted for filing a revised service agreement with the City of Brady, Texas (Brady) under WTU's FERC Electric Tariff, Original Volume No. 1.

WTU seeks an effective date of April 1, 2002 and, accordingly, seeks waiver of the Commission's notice requirements. WTU states that a copy of this filing has been served on Brady and the Public Utilities Commission of Texas.

Comment Date: March 28, 2002.

28. The Detroit Edison Company

[Docket No. ER02–1280–000]

Take notice that on March 7, 2002, The Detroit Edison Company (Detroit Edison) tendered for filing a Service Agreement for wholesale power sales transactions (the Service Agreements) under Detroit Edison's Wholesale Power Sales Tariff (WPS–2), FERC Electric Tariff No. 3 (the WPS–2 Tariff) between Detroit Edison and Nicor Energy, LLC.

Comment Date: March 28, 2002.

29. Maine Electric Power Company

[Docket No. ER02–1281–000]

Please take notice that on March 7, 2002, Maine Electric Power Company (MEPCO) tendered for filing an Executed Service Agreement for ''Umbrella'' Non-Firm Point-to-Point Transmission Service with Emera Energy Services, Inc., designated as FERC Electric Tariff, Volume No. 1, as supplemented, Service Agreement No. 68.

Comment Date: March 28, 2002.

30. Virginia Electric and Power Company

[Docket No. ER02–1282–000]

Take notice that on March 8, 2002, Virginia Electric and Power Company, d/b/a Dominion Virginia Power, tendered for filing a Notice of Cancellation and a revised cover sheet to cancel an executed Generator Interconnection and Operating Agreement (Interconnection Agreement) between Dominion Virginia Power and Tractebel North America Services, Inc. (Tractebel).

Dominion Virginia Power requested an effective date of March 9, 2002. Copies of the filing were served upon Tractebel and the Virginia State Corporation Commission.

Comment Date: March 29, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–6556 Filed 3–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–5–000, et al.]

Vermont Yankee Nuclear Power Corporation, et al.; Electric Rate and Corporate Regulation Filings

March 11, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. Vermont Yankee Nuclear Power Corporation

[Docket Nos. EC02–5–000 and ER02–211–002]

Take notice that on March 4, 2002, Vermont Yankee Nuclear Power Corporation (Vermont Yankee) tendered for filing with the Federal Energy Regulatory Commission (Commission), FERC Electric Rate Schedule, First Revised Volume No. 12, in compliance with the Commission's order issued on February 1, 2002 in Docket Nos. EC02–5–000 and EL02–53–000.

Comment Date: March 25, 2002.

2. International Transmission Company

[Docket No. EC02–28–001]

Take notice that on March 4, 2002, International Transmission Company (International Transmission) tendered a filing in compliance with an order of the Federal Energy Regulatory Commission (Commission) issued on January 31, 2002, in the above-referenced docket, International Transmission Company, 98 FERC ¶ 61,078 (2002). In the order, the Commission directs International Transmission to submit a final updated list of all service agreements under the joint open access transmission tariff.

Comment Date: March 25, 2002.

3. Michigan Electric Transmission Company

[Docket No. ER02–540–001]

Take notice that on March 5, 2002, Michigan Electric Transmission Company (Michigan Transco) tendered for filing a Notice of Cancellation of a Generator Interconnection and Operating Agreement (which is designated as Service Agreement No. 30 under METC's FERC Electric Tariff No. 1) to be effective February 22, 2002 or as soon thereafter as allowed by the Commission.

A copy of the Notice was served on the Generator, Tallmadge Generation Company, L.L.C.

Comment Date: March 26, 2002.

4. Central Maine Power Company

[Docket No. ER02–720–001]

Take notice that on March 5, 2002, in compliance with the Commission=s letter order dated February 20, 2002, Central Maine Power Company (Central Maine) tendered for filing with the Federal Energy Regulatory Commission (Commission), pursuant to Section 205 of the Federal Power Act, executed, unredacted copies of the following service agreements: (1) System Contract Entitlement Agreement; (2) Renewable and Eligible Resource Entitlement Agreement; (3) Nuclear Entitlement Agreement (collectively, Entitlement Agreements). In addition, CMP tendered for filing executed, unredacted copies of the Comprehensive Credit Support and Final Settlement Calculation Agreement (Credit Support Agreement), which pertains to security of respective obligations in the entitlement agreements listed above. CMP further designated these agreements in accordance with Order No. 614, FERC Stats. & Regs. 31,096 (2000).

CMP originally filed the agreements on January 8, 2002, requesting confidential treatment for certain material contained in the agreements that Constellation Power Source, Inc. considered to be competitively sensitive business information. The Commission denied this request for confidentiality by letter order dated February 20, 2002, and requested CMP to re-file the agreements on a non-confidential basis within 15 days of the letter order. See Letter Order, Docket No. ER02–720–000 (Feb. 20, 2002). In addition, the Commission requested CMP to designate the agreements in accordance with Order No. 614.

Comment Date: March 26, 2002.

5. Great Plains Power Incorporated

[Docket No. ER02–725–001]

Take notice that on March 5, 2002, Great Plains Power Incorporated (GPPI) tendered for filing revised tariff sheets in support of its application for authorization to sell power at market-based rates.

Comment Date: March 21, 2002.

6. Allegheny Energy Service Corporation, on Behalf of Monongahela Power Company; The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER02–1237–000]

Take notice that on March 4, 2002, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Service Agreement No. 375 to add RWE Trading Americas Inc. to Allegheny Power's Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000. The proposed effective date under the Service Agreement is March 1, 2002 or a date ordered by the Commission.

Copies of the filing have been provided to all parties of record.

Comment Date: March 25, 2002.

6. MPC Generating, LLC

[Docket No. ER02–1238–000]

Take notice that on March 4, 2002, MPC Generating, LLC (MPC) tendered for filing a Notice of Succession pursuant to sections 35.16 and 131.51 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.16 and 131.51. Effective February 1, 2002, MPC succeeded to the FERC Electric Tariff, Original Volume 1, of Monroe Power Company, pursuant to an assignment approved by order of the Commission in Progress Energy, Inc., 97 FERC ¶ 62,192 (2001).

Comment Date: March 25, 2002.

7. Pennsylvania Electric Company

[Docket No. ER02–1239–000]

Take notice that on March 4, 2002, Pennsylvania Electric Company submitted for filing a letter agreement (Agreement) between Penelec and its affiliate, FirstEnergy Solutions Corp. (FE Solutions). Under the Agreement, FE Solutions has agreed to the operational and financial responsibilities set forth in the Manuals in connection with FE Solutions becoming the Load Serving Entity for the Pennsylvania Borough of East Conemaugh. Copies of the filing were served upon FE Solutions, PJM and regulators in the Commonwealth of Pennsylvania.

Comment Date: March 25, 2002.

8. Virginia Electric and Power Company

[Docket No. ER02–1240–000]

Take notice that on March 4, 2002, Virginia Electric and Power Company

(the Company) respectfully tendered for filing the following Service Agreement by Virginia Electric and Power Company to Sempra Energy Trading Corp., designated as Service Agreement No. 1 under the Company's Wholesale Cost-Based Rate Tariff, FERC Electric Tariff, Original Volume No. 7, effective on January 16, 2002.

The Company requests an effective date of February 1, 2002, as requested by the customer. Copies of the filing were served upon Sempra Energy Trading Corp., the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment Date: March 25, 2002.

9. Southern California Edison Company

[Docket No. ER02–1241–000]

Take notice that on March 4, 2002, Southern California Edison Company, (SCE) submitted a Letter Agreement between SCE and the City of Industry Public Utilities Commission (Industry). The Letter Agreement provides for SCE to commence with construction of interconnection facilities and to extend a distribution circuit in order to provide wholesale distribution service.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Industry.

Comment Date: March 25, 2002.

10. West Texas Utilities Company

[Docket No. ER02–1242–000]

Take notice that on March 4, 2002, West Texas Utilities Company (WTU) filed with the Federal Energy Regulatory Commission (Commission) revisions to a service agreement between WTU and the City of Weatherford, Texas (Weatherford) under WTU's market-based rate power sales tariff. Effective February 1, 2002, the revision replaces the formula used to compute the fuel charge for sales to Weatherford under the service agreement with a fixed fuel charge.

WTU seeks an effective date of February 1, 2002 for the revised service agreement and, accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing have been served on Weatherford and on the Public Utility Commission of Texas.

Comment Date: March 25, 2002.

11. PPL Brunner Island, LLC

[Docket No. ER02–1243–000]

Take notice that on March 4, 2002, PPL Brunner Island, LLC (PPL Brunner Island), filed with the Federal Energy Regulatory Commission a Power Sales Agreement between PPL Brunner Island and Brunner Island Services, LLC under PPL Brunner Island's Market-Based Rate Tariff, FERC Electric Tariff, Original Volume No. 1.

PPL Brunner Island requests an effective date of February 1, 2002 for the Power Sales Agreement. PPL Brunner Island states that a copy of this filing has been provided to Brunner Island Services, LLC.

Comment Date: March 25, 2002.

12. PPL Montour, LLC

[Docket No. ER02–1244–000]

Take notice that on March 4, 2002, PPL Montour, LLC (PPL Montour), filed with the Federal Energy Regulatory Commission a Power Sales Agreement between PPL Montour and Montour Services, LLC under PPL Montour's Market-Based Rate Tariff, FERC Electric Tariff, Original Volume No. 1.

PPL Montour requests an effective date of February 1, 2002 for the Power Sales Agreement. PPL Montour states that a copy of this filing has been provided to Montour Services, LLC.

Comment Date: March 25, 2002.

13. Jersey Central Power & Light Company Metropolitan Edison Company Pennsylvania Electric Company

[Docket No. ER02–1245–000]

Take notice that on March 4, 2002, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), filed an executed Service Agreement between GPU Energy and Aquila Energy Marketing Corporation (AQUILA), dated March 1, 2002. This Service Agreement specifies that AQUILA has agreed to the rates, terms and conditions of GPU Energy's Market-Based Sales Tariff (Sales Tariff) designated as FERC Electric Rate Schedule, Second Revised Volume No. 5. The Sales Tariff allows GPU Energy and AQUILA to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus capacity and/or energy.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of March 1, 2002 for the Service Agreement. GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment Date: March 25, 2002.

14. The Dayton Power and Light Company

[Docket No. ER02–1246–000]

Take notice that on March 4, 2002, The Dayton Power and Light Company (Dayton) submitted to the Federal Energy Regulatory Commission (Commission) service agreements establishing NRG Power Marketing Inc., as a customer under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Dayton requests waiver of the Commission's notice requirements. Copies of this filing were served upon NRG Power Marketing Inc., and the Public Utilities Commission of Ohio.

Comment Date: March 25, 2002.

15. The Dayton Power and Light Company

[Docket No. ER02–1247–000]

Take notice that on March 4, 2002, The Dayton Power and Light Company (Dayton) submitted service agreements establishing The Dayton Power & Light Company (Energy Services) as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of this filing were served upon The Dayton Power & Light Company (Energy Services) and the Public Utilities Commission of Ohio.

Comment Date: March 25, 2002.

16. The Dayton Power and Light Company

[Docket No. ER02–1248–000]

Take notice that on March 4, 2002, The Dayton Power and Light Company (Dayton) submitted service agreements establishing NRG Power Marketing Inc. as a customer under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of this filing were served upon NRG Power Marketing Inc. and the Public Utilities Commission of Ohio.

Comment Date: March 25, 2002.

17. Mississippi Power Company

[Docket No. ER02–1249–000]

Please take notice that Mississippi Power Company on March 5, 2002, tendered for filing proposed changes in its FERC Electric Tariff, First Revised Volume Number 1. The proposed changes would increase revenues from jurisdictional sales and service by $10,537,835 based on the 12-month period ending December 31, 2002, add an energy cost management clause to

the tariff, change the formula for the fuel adjustment clause and restate the tariff, all in accordance with a settlement agreement between Mississippi Power Company and all its customers who take service under the tariff.

Copies of the filing were served upon South Mississippi Electric Power Association, East Mississippi Electric Power Association, Coast Electric Power Association, Pearl River Valley Electric Power Association, Singing River Electric Power Association, Dixie Electric Power Association, Southern Pine Electric Power Association, the City of Collins, Mississippi, the Mississippi Public Service Commission, and the Mississippi Public Utilities Staff.

Comment Date: March 26, 2002.

18. West Georgia Generating Company, L.L.C.

[Docket No. ER02–1250–000]

Take notice that on March 5, 2002, West Georgia Generating Company, L.L.C. (West Georgia) tendered for filing one confidential, unredacted copy and fourteen redacted copies of the First Amended and Restated Negotiated Contract for the Purchase of Firm Capacity and Energy between West Georgia Generating Company, L.L.C. and Georgia Power Company (Negotiated Contract), as First Revised Service Agreement No. 4 under West Georgia's market-based rate tariff. West Georgia requested confidential treatment for the unredacted copy of the Negotiated Contract.

Comment Date: March 26, 2002.

19. Allegheny Energy Service Corporation, on Behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER02–1251–000]

Take notice that on March 5, 2002, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power), filed Interconnection Agreements (Agreements) with Allegheny Energy Supply Company, LLC—Albright (Service Agreement No. 376), Allegheny Energy Supply Company, LLC—Armstrong (Service Agreement No. 377), Allegheny Energy Supply Company, LLC—Fort Martin (Service Agreement No. 378), Allegheny Energy Supply Company, LLC—Harrison (Service Agreement No.379), Allegheny Energy Supply Company, LLC—Hatfield (Service Agreement No. 380), Allegheny Energy Supply Company, LLC—Lake Lynn (Service Agreement No. 381), Allegheny Energy Supply Company, LLC—Mitchell (Service Agreement No. 382), Allegheny Energy Supply Company, LLC—Pleasants (Service Agreement No.383), Allegheny Energy Supply Company, LLC—Rivesville (Service Agreement No. 384), Allegheny Energy Supply Company, LLC—Willow Island (Service Agreement No. 385) and Allegheny Energy Supply Company, LLC—R. Paul Smith (Service Agreement No. 386) under Allegheny Power's Open Access Transmission Tariff. The proposed effective date under the Agreements is March 6, 2002.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment Date: March 26, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–6508 Filed 3–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–52–000]

Iroquois Gas Transmission System, L.P.; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Eastern Long Island Expansion Project and Request for Comments on Environmental Issues

March 13, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the Eastern Long Island Expansion Project (ELI Project) involving construction and operation of facilities by Iroquois Gas Transmission System, L.P. (Iroquois) in Fairfield and New Haven Counties, Connecticut, and Dutchess and Suffolk Counties, New York.[1] These facilities would consist of about 29.1 miles of 20-inch-diameter pipeline, including 17.1 miles offshore in Long Island Sound; and 20,000 horsepower (hp) of compression. This EIS will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice that Iroquois provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site, *www.ferc.gov*.

[1] Iroquois' application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

Summary of the Proposed Project

Iroquois wants to expand the capacity of its natural gas facilities in Connecticut and New York to transport an additional 175,000 dekatherms per day of firm transportation service to expanding markets on Long Island, New York. Iroquois seeks authority to construct and operate:

- 29.1 miles of 20-inch-diameter pipeline in New Haven County, Connecticut, and Suffolk County, New York;
- a new meter station along the proposed ELI pipeline at about milepost (MP) 29.1;
- ancillary facilities including a marine tap interconnection and facilities for the attachment of a pig launcher in Long Island Sound in Connecticut state waters; three mainline valves (MPs 17.5, 22.7, and 29.1), and one pig receiving facility housed within the meter station layout at the project terminus at MP 29.1;
- a new 20,000 horsepower compressor station at Iroquois' existing mainline valve site in Milford, Fairfield County, Connecticut;
- new piping, compressor and piping modifications, and ancillary facilities to accept natural gas from the Algonquin Gas Transmission (AGT) Company's AGT System at a proposed new Iroquois compressor station in Brookfield, Fairfield County, Connecticut (note: Iroquois is currently pursuing a separate FERC Certificate for the compressor station under Docket No. CP96–687–000);
- a discharge gas cooler to be added to the proposed new compressor station in Dover, Duchess County, New York (note: Iroquois is pursuing a separate FERC Certificate for the compressor station under Docket No. CP00–232–000); and
- temporary pipe and storage yards, staging areas, access roads, etc., to be used only during construction of the proposed facilities.

The location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require about 369.0 acres of land, including 140.4 acres onshore and 228.6 acres offshore. This includes about 3.9 acres to construct the proposed aboveground facilities. Following construction, about 135.1 acres would be maintained as permanent/operational right-of-way (ROW). This includes about 72.9 acres onshore (including 0.2 acres for new aboveground facilities), and 62.2 acres for offshore ROW. The remaining 233.9 acres of land used only temporarily during construction would be restored and allowed to revert to its former use.

Iroquois proposes to use a 75-foot-wide ROW to construct most of its onshore pipeline, including 50 feet that would be maintained as permanent ROW. About 90 percent of the 12 miles of onshore construction would be within or adjacent to existing ROW. For offshore construction, Iroquois proposes to use a ROW that would be either 100, 200, or 300 feet wide for specific segments, and would include 30 feet to be maintained as permanent ROW.

The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [3] to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EIS. All comments received are considered during the preparation of the EIS. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- geology and soils
- water resources, fisheries, and wetlands
- vegetation and wildlife
- endangered and threatened species
- public safety
- land use
- cultural resources
- air quality and noise
- hazardous waste

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EIS. Depending on the comments received during the scoping process, the EIS may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EIS is published. We will consider all comments on the EIS before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section beginning on page 6.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Iroquois. This preliminary list of issues may be changed based on your comments and our analysis.

- FERC is currently evaluating another project known as the Islander East Pipeline Project (Docket numbers CP01–384–000 and CP01–387–000), that would involve construction and operation of facilities proposed by Islander East Pipeline Company, L.L.C. (Islander East), and related facilities to be constructed and operated by Algonquin Gas Transmission Company (Algonquin). The facilities proposed within Suffolk County, New York would be within the same ROW proposed for use by Islander East.[4]
- About 17.1 miles of Long Island Sound would be crossed, with potential impacts to shellfish resources, sediments and benthic organisms, and potential essential fish habitat (EFH) for

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the ''RIMS'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

[4] Although Iroquois believes its proposed ELI Project facilities could replace and are superior to the facilities proposed by Islander East, we note that the filed applications have different proposed customers. This means these projects could potentially serve mutually exclusive needs, and we must evaluate them each on their own merits. It is equally possible that the Commission could issue a Certificate for only one proposal, or it could approve both of them. Therefore, if you are a potentially affected landowner on Long Island, there is a possibility that both projects could be built, and the proposed ELI Project facilities would require permanent ROW in addition to what is proposed by Islander East. This issue will be described and evaluated in the EIS we prepare for the ELI Project.

up to 37 federally managed species with designated EFH.

• Seven residences would be located within 50 feet of the construction work area.

• About 79.1 acres of the Central Pine Barrens would be disturbed, with 53.0 acres retained as permanent ROW.

• A total of 2 perennial and 1 intermittent waterbodies would be crossed.

• About 1.8 acres of wetlands would be disturbed during construction, with about 1.2 acres maintained as permanent ROW.

• About 78.4 acres of upland forest would be cleared during construction, including about 26.9 acres that would be maintained as permanent ROW.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EIS and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes or facility sites), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

• Send an original and two copies of your letter to:

Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426.

• Label one copy of the comments for the attention of Gas 2.

• Reference Docket No. CP02–52–000.

• Mail your comments so that they will be received in Washington, DC on or before April 12, 2002.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create an account which can be created by clicking on ''Login to File'' and then ''New User Account.''

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EIS scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).[5] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208–1088 (direct line) or you can call the FERC operator at 1–800–847–8885 and ask for External Affairs. Information is also available on the FERC website, www.ferc.gov, using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2222.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–6557 Filed 3–18–02; 8:45 am]

BILLING CODE 6717–01–P

[5] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51984; FRL–6826–9]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from January 24, 2002 to February 12, 2002, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. This notice also includes a correction for a PMN from March 29, 2000. The ''S'' and ''G'' that precede the chemical names denote whether the chemical idenity is specific or generic.

DATES: Comments identified by the docket control number OPPTS–51984 and the specific PMN number, must be received on or before April 18, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51984 and the specific PMN number in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and

Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations'','' Regulations and Proposed Rules, and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–51984. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, any test data submitted by the Manufacturer/Importer is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B– 607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51984 and the specific PMN number in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

3. *Electronically*. You may submit your comments electronically by e-mail to: ''oppt.ncic@epa.gov,'' or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–51984 and the specific PMN number. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from January 24, 2002 to February 12, 2002, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that

may be available. This notice also includes a correction for PMN P–00–0685, from March 29, 2000, which corrects the Chemical Name. The ''S'' and ''G'' that precede the chemical names denote whether the chemical idenity is specific or generic.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 65 PREMANUFACTURE NOTICES RECEIVED FROM: 01/24/02 TO 02/12/02

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0685	03/29/00	06/27/00	CBI	(G) Additive for plastics	(G) Butadiene, alkylacrylate, alkyl methacrylate, co-polymer
P–02–0285	01/23/02	04/23/02	R. T. Vanderbilt Company, Inc.	(S) Functional filler for polymer systems	(S) Silane, trimethoxy[3-oriranylmethoxy]propyl-, reaction products with wollastonite (ca(sio3)
P–02–0286	01/23/02	04/23/02	CIBA Specialty Chemicals Corporation, textile effects	(G) Textile dye	(G) Naphthalenedisulfonic acid, amino halo alkyl sulfonyl alkyl amino-1,3,5-triazin sulfophenyl azo hydroxy substituted phenyl azo sodium salt
P–02–0287	01/23/02	04/23/02	BASF Corporation	(S) Processing aid for leather tanning	(G) Ethoylated alkyl alcohol
P–02–0288	01/23/02	04/23/02	CBI	(G) Dehydration and demulsification agent	(G) Alkoxylated fatty acid esters
P–02–0289	01/23/02	04/23/02	UBE America Inc.	(S) Raw material of polyurethane	(S) Carbonic acid, dimethyl ester, polymer with 1,4-cyclohexanedimethanol and 1,6-hexanediol
P–02–0290	01/24/02	04/24/02	PRC-Desoto International,PPG Industries Company	(S) Polymer for Adhesives and sealants	(G) Alkoxysilane terminated polyurethane polymer
P–02–0291	01/24/02	04/24/02	Sony Magnetic Products Inc. of America	(G) Binder resin	(S) Peroxydisulfuric acid ([ho)s(o) subscript 2] subscript 2 o subscript 2), dipotassium salt, reaction products with 2-(2-propenyloxy)ethanol-[(2-propenyloxy)methyl]oxirane-vinyl chloride polymer
P–02–0292	01/24/02	04/24/02	CBI	(G) Component of lubricating composition for finishing product of fiber and yarn	(G) Fatty acid, polyoxyethylene-alkyl ether, ester
P–02–0293	01/23/02	04/23/02	CBI	(G) Open, non-dispersive use.	(G) Acrylic polymer
P–02–0294	01/23/02	04/23/02	3D Systems, Inc.	(G) Printing ink stabilizer	(G) Urethane wax
P–02–0295	01/23/02	04/23/02	3D Systems, Inc.	(G) Printing ink stabilizer	(G) Urethane wax
P–02–0296	01/23/02	04/23/02	3D Systems, Inc.	(G) Printing ink stabilizer	(G) Urethane wax
P–02–0297	01/24/02	04/24/02	CBI	(S) Binder for nonwovens	(G) Functionalized styrene-butadiene-acrylonitrile copolymer
P–02–0298	01/25/02	04/25/02	Westvaco Corporation - Chemical Division	(S) Component in asphalt emulsifier	(G) Glycerides, animal, reaction products with polyamines
P–02–0299	01/24/02	04/24/02	CBC (America) Corporation	(S) Adhesive resin for adhesive tape to be used in the process of paper manufacturing	(S) 2-propenoic acid, polymer with ethyl 2-propenoate, potassium salt
P–02–0300	01/25/02	04/25/02	Westvaco Corporation - Chemical Division	(S) Asphalt emulsifier salt	(G) Glycerides, animal, reaction products with polyamines, hydrochlorides
P–02–0301	01/25/02	04/25/02	E.I. Du pont De Nemours and Company - Dupont Nylon	(S) Polyurethane monomer; polyester monomer; fragrance intermediate	(S) 1,4-cyclododecanediol
P–02–0302	01/25/02	04/25/02	E.I. Du pont De Nemours and Company - Dupont Nylon	(S) Polyurethane monomer; polyester monomer; fragrance intermediate	(S) 1,5-cyclododecanediol
P–02–0303	01/25/02	04/25/02	E.I. Du pont De Nemours and Company - Dupont Nylon	(S) Polyurethane monomer; polyester monomer; fragrance intermediate	(S) 1,6-cyclododecanediol
P–02–0304	01/25/02	04/25/02	E.I. Du pont De Nemours and Company - Dupont Nylon	(S) Polyester monomer; fragrance intermediate; polyurethane monomer	(S) 1,12-dodecanediol
P–02–0305	01/29/02	04/29/02	Clariant ISM (America) Inc.	(S) Intermediate for manufacture of photo developing chemicals	(G) Benzyl ethoxy imidazoldine derivative

I. 65 PREMANUFACTURE NOTICES RECEIVED FROM: 01/24/02 TO 02/12/02—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0306	01/28/02	04/28/02	Lamberti USA, Inc.	(S) Photoinitiator for uv-curable pigmented inks; photoinitiator for photoresists, optical fibers and printing plates; photoinitiator for uv-curable powder coatings; photoinitiator for uv-curable adhesives and other coatings; open/non-dispersive use	(S) 1-propanone, 1-[4-[(4-benzoylphenyl)thio]phenyl]-2-methyl-2-[(4-methylphenyl)sulfonyl]-
P–02–0307	01/29/02	04/29/02	Clariant LSM (America) Inc.	(S) Intermediate for production of photo development chemicals	(G) Bromo m anilide ester derivative
P–02–0308	01/29/02	04/29/02	Clariant LSM (America) Inc.	(S) Photo chemical intermediate	(G) Hydantoinyl m-anilide ester
P–02–0309	01/29/02	04/29/02	Clariant LSM (America) Inc.	(S) Raw material for manufacture of photo development chemicals	(G) Benzoic acid ester derivative
P–02–0310	01/31/02	05/01/02	CBI	(G) Open, non-dispersive (resin)	(G) Aliphatic polyisocyanate
P–02–0311	01/31/02	05/01/02	NOF America Corporation	(G) Impact modifier for use in engineering plastics	(G) Acrylic copolymer
P–02–0312	01/31/02	05/01/02	Eastman Chemical Company	(S) Size for processing textile fibers	(G) Poly(ester-ether)
P–02–0313	01/31/02	05/01/02	Eastman Chemical Company	(S) Size for processing textile fibers	(G) Poly(ester-ether)
P–02–0314	01/31/02	05/01/02	Eastman Chemical Company	(S) Size for processing textile fibers	(G) Poly(ester-ether)
P–02–0315	01/31/02	05/01/02	CBI	(G) Open, non-dispersive (resin)	(G) Aliphatic urethane acrylate
P–02–0316	01/31/02	05/01/02	The Dow Chemical Company	(S) Curing agent for epoxy resin formulations	(G) Branched phenolic hardener
P–02–0317	01/31/02	05/01/02	The Dow Chemical Company	(S) Curing agent for epoxy resin formulations	(G) Branched phenolic hardener
P–02–0318	01/31/02	05/01/02	The Dow Chemical Company	(S) Curing agent for epoxy resin formulations	(G) Branched phenolic hardener
P–02–0319	02/01/02	05/02/02	Degussa Corporation	(S) Automotive fuel lines	(G) Imine modified polyamide
P–02–0320	02/01/02	05/02/02	CBI	(S) Tackifying resin for adhesives formulations	(G) Polymer of phenol and substituted benzenes
P–02–0321	02/01/02	05/02/02	CBI	(S) Raw material for use in fragrances for soaps, detergents, cleaners and other household Products	(G) Ethoxy alkene
P–02–0322	02/04/02	05/05/02	Osram Sylvania Products Inc.	(G) Chemical intermediate (destructive use)	(S) Zinc, [ethandioato(2-)-.kappa.01,.kappa.02]-
P–02–0323	01/29/02	04/29/02	Solutia Inc.	(S) Defoamer for water based industrial coatings	(G) Modified fatty acid ester
P–02–0324	01/28/02	04/28/02	Lobeco Products, Inc.	(G) Coating additive for open, non-dispersive use	(G) Naphthalenesulfonic acid, alkyl derivs., sodium salt
P–02–0325	02/01/02	05/02/02	3M	(G) Coating	(G) Polyurethane prepolymer
P–02–0326	02/05/02	05/06/02	CBI	(S) Chemically reacted intermediate	(S) Benzenamine, 2-nitro-4-(trifluoromethyl)-
P–02–0327	02/05/02	05/06/02	CBI	(S) A polyol for making polyurethanes	(S) Soybean oil, epoxidized, reaction products with methanol
P–02–0328	02/04/02	05/05/02	Hercules Incorporated	(G) Water stable concrete and cement additive; scale control agent for water treatment	(G) Acrylate copolymer
P–02–0329	02/05/02	05/06/02	CBI	(G) Pigment dispersant	(G) Fatty acid polyethyleneimine condensate polymer
P–02–0330	02/05/02	05/06/02	Amfine Chemical Corporation	(G) Thickening agent	(G) Polyalkylene glycol, alkyl ether, reaction products with diisocyanatoalkane and polyalkylene glycol
P–02–0331	02/05/02	05/06/02	CBI	(S) Automotive base coates	(S) 1,3-benzenedicarboxylic acid, polymer with 5-amino-1,3,3-trimethylcyclohexanemethanamine, hexanedioic acid, 1,6-hexanediol, 3-hydroxy-2-(hydroxymethyl)-2-methylpropanoic acid and 1,1′-methylenebis [4-isocyanatocyclohexane], compd. with n,n-diethylethanamine
P–02–0332	02/05/02	05/06/02	CBI	(G) Surface coating resin	(G) Epoxy siloxane resin

I. 65 PREMANUFACTURE NOTICES RECEIVED FROM: 01/24/02 TO 02/12/02—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0333	02/06/02	05/07/02	Aoc L.L.C.	(S) Polyester component for gelcoat resin for spray up of fiberglass reinforced and non-reinforced plastic parts	(S) 1,3-isobenzofurandione, hexahydro-, polymer with 2,2-dimethyl-1,3-propanediol, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, 2,5-furandione and 1,2-propanediol, 2-ethylhexyl ester
P–02–0334	02/05/02	05/06/02	Solutia Inc.	(S) Tire cord adhesion promoter	(G) Modified phenolic resin
P–02–0335	02/05/02	05/06/02	CBI	(S) Resin for coatings, inks and adhesives	(S) 2-propenoic acid, 2-methyl-, polymer with n-(1,1-dimethyl-3-oxobutyl)-2-propenamide, ethyl 2-propenoate and methyl 2-methyl-2-propenoate, ammonium salt
P–02–0336	02/05/02	05/06/02	Wise Technical Marketing, Inc.	(S) Anti-corrosive pigment for solvent based paints and coatings	(G) Organic complexes comprising alkaline earth metals and phosphates
P–02–0337	02/08/02	05/09/02	CBI	(G) Open, non-dispersive use	(G) Aromatic alkanoate
P–02–0338	02/11/02	05/12/02	CBI	(G) Leather dyestuff	(G) Copper azo dye
P–02–0339	02/12/02	05/13/02	CBI	(G) Amine synergists for coatings and inks	(G) Amino acrylate
P–02–0340	02/11/02	05/12/02	Solutia Inc.	(S) Crosslinker for paper coatings	(G) Modified melamine formaldehyde resin
P–02–0341	02/11/02	05/12/02	CBI	(G) Reaction modifier	(G) Partially propoxylated trifunctional polyamine
P–02–0342	02/11/02	05/12/02	Solutia Inc.	(S) Curing resin for industrial coatings	(G) Polyester resin
P–02–0343	02/11/02	05/12/02	CBI	(G) Open, non-dispersive use	(G) Aromatic acid diesters
P–02–0344	02/12/02	05/13/02	Daychem Laboratories, Inc.	(S) Monomers used for making specialty polymers	(S) Silane, trichloro[(4-methoxyphenyl)methyl]-
P–02–0345	02/12/02	05/13/02	CBI	(G) Textile lubricant	(G) Polyalkoxylated fatty acids
P–02–0346	02/12/02	05/13/02	CBI	(G) An open non-dispersive use	(G) Alkyd resin
P–02–0347	02/12/02	05/13/02	Custochem, Inc.	(S) Fiber lubricant denim finishing	(S) Fatty acids, $C_{16–18}$-unsatd., branced and linear, esters with high-boiling $C_{6–10}$ alkene hydroformylation Products

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 36 NOTICES OF COMMENCEMENT FROM: 01/24/01 TO 02/12/02

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–0341	01/30/02	12/19/01	(G) Urethane acrylate
P–00–0721	01/28/02	11/23/01	(G) Flexible acrylic polymer
P–00–1032	01/30/02	12/20/01	(G) Acrylated silica
P–00–1150	01/24/02	10/27/01	(G) Poly(ester-ether)
P–00–1184	02/06/02	10/25/01	(G) Phenol, polymer with formaldehyde, glycidyl ether, reaction Products with carbomonocylic carboxylic acid and hydroxy alkanoic acid homopolymer
P–01–0062	02/12/02	12/18/01	(G) Substituted bicyclic olefin
P–01–0334	01/30/02	10/24/01	(G) Polyether functional acrylic polymer
P–01–0424	01/28/02	10/11/01	(G) Benzopyranone
P–01–0456	01/25/02	01/22/02	(G) Inorganic layer polymer
P–01–0485	01/28/02	12/04/01	(G) Acrylic solution polymer
P–01–0555	01/25/02	12/26/01	(G) Hexanedioic acid, polymer with 1,4-butanediol, 2,2-dimethyl-1,3-propanediol, 1,6-hexanediol, oxyalkylpropanoic acid and 5-isocyanato-1-(isocyanatomethyl)-alkylcyclohexane, compounded with triethylamine
P–01–0574	01/24/02	10/16/01	(G) Polycarbonate, polymer with polyester, substituted propanoic acid, a diamine and a diisocyanate, compounded with an amine
P–01–0676	02/05/02	11/07/01	(G) Polyalkoxylated aromatic chromophore
P–01–0680	02/05/02	11/13/01	(G) Polyalkoxylated intermediate
P–01–0689	01/28/02	11/16/01	(G) Substituted alkyl ester acid
P–01–0710	02/05/02	10/14/01	(G) Chromophore substituted polyoxyalkylene
P–01–0712	01/30/02	01/11/02	(G) Chromophore substituted polyoxyalkylene tint
P–01–0720	02/12/02	11/27/01	(G) Acrylic polymer resin
P–01–0729	01/31/02	01/17/02	(G) Aminopolyamide wet strength resin
P–01–0736	02/12/02	01/18/02	(G) Fatty alkylamines, reaction product with sodium chloracetate
P–01–0737	01/23/02	12/18/01	(G) Aminopolyamide
P–01–0757	02/08/02	01/30/02	(G) Alkyl carboxylic acid amine salt
P–01–0760	02/08/02	10/24/01	(G) Tetraisopropyl titanate, polymer with ketone resin and amyl acid phosphate

II. 36 NOTICES OF COMMENCEMENT FROM: 01/24/01 TO 02/12/02—Continued

Case No.	Received Date	Commencement/ Import Date	Chemical
P–01–0811	01/29/02	11/26/01	(G) Modified hydrogenated rosin
P–01–0847	01/30/02	01/02/02	(G) Styrene, polymer with alky methacrylates and an alkanedioic acid diester
P–01–0865	02/12/02	02/07/02	(G) Ethylene amine aromatic epoxide adduct
P–01–0897	02/05/02	01/02/02	(G) Phosphated polyester
P–01–0898	01/31/02	01/16/02	(G) Grafted mercaptosiloxane(s)
P–01–0899	01/31/02	01/16/02	(G) Grafted mercaptosiloxane(s)
P–01–0935	02/04/02	01/12/02	(G) Aromatic thiophene derivative
P–02–0020	02/01/02	01/12/02	(G) Ester wax
P–02–0033	02/04/02	01/25/02	(G) Sodium salt of methacrylic acid, methylacrylate copolymer
P–98–0101	02/12/02	10/16/01	(S) 7-oxabicyclo[4.1.0]heptane-3-carboxylic acid, methyl ester
P–98–1212	01/25/02	01/17/02	(G) N-butyl, 2-ethylhexyl acrylate copolymer
P–99–0256	01/24/02	09/25/01	(G) Phtalic anhydride, polymer with diethyleneglycol, aliphatic alcohol esters
P–99–0621	02/07/02	11/28/01	(G) Isocyanate-functionalized prepolymer

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: March 5, 2002.

Mary Louise Hewlett,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 02–6616 Filed 3–18–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7159–1]

Notice of Proposed Administrative Cost Recovery Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), notice is hereby given of a proposed administrative cost recovery settlement under section 122(h)(1) of CERCLA concerning the Burgess Inc. Site in Freeport, Illinois, which was signed by the Director of the Superfund Division, EPA Region 5, on January 9, 2002. The settlement resolves an EPA claim under section 107(a) of CERCLA against Gould Electronics Inc. The settlement requires the settling party to pay $107,500 to the Hazardous Substances Superfund.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the Freeport Public Library, 314 W. Stephenson St., Freeport, Illinois and EPA Offices, 7th Floor, 77 W. Jackson Blvd., Chicago, Illinois.

DATES: Comments must be submitted on or before April 18, 2002.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 7th Floor Superfund File Room, 77 W. Jackson Blvd., Chicago, Illinois. A copy of the proposed settlement may be obtained from Gaylene Vasaturo at (312) 886–1811. Comments should reference the Burgess Inc. Site, Freeport, Illinois and EPA Docket No. V–W–02-C–673 and should be addressed to Gaylene Vasaturo (C–14J), 77 W. Jackson Blvd., Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Gaylene Vasaturo (C–14J), 77 W. Jackson Blvd., Chicago, Illinois 60604, (312) 886–1811.

Dated: March 5, 2002.

William E. Muno,

Director, Superfund Division.

[FR Doc. 02–6614 Filed 3–18–02; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting; Sunshine Act

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on March 21, 2002, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Kelly Mikel Williams, Secretary to the Farm Credit Administration Board, (703) 883–4009, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

I. Approval of Minutes

- February 14, 2002 (Open and Closed)

II. Reports

- FCS Building Association's Quarterly Report
- OFI Lending and Alternative Funding Mechanisms
- GAO–02–304: Farm Credit Administration—Oversight of Special Mission to Serve Young, Beginning, and Small Farmers Needs to Be Improved

III. New Business—Regulations

- Termination of Farm Credit Status—Draft Final Rule
- Electronic Commerce—Draft Final Rule

Dated: March 15, 2002.

Jeanette C. Brinkley,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 02–6732 Filed 3–15–02; 2:16 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 02–570]

Commission Seeks Comment on BT North America, Inc.'s Expedited Petition for Clarification of the Contribution Obligations of Video Distribution Service Providers

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: This document seeks comments on BT North America, Inc. Petition for Clarification of the universal service contribution obligations of non-common carrier video distribution service providers. Specifically, BT North America asks the Commission to clarify that similarly situated entities transmitting video programming on a non-common carrier basis, that do not compete with common carriers, should be exempted from contributing on the basis of revenues derived from these services.

DATES: Comments are due on or before April 9, 2002. Reply comments are due on or before April 19, 2002.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for where and how to file comments.

FOR FURTHER INFORMATION CONTACT: Paul Garnett, Attorney, Accounting Policy Division, Common Carrier Bureau, (202) 418–7400, TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: On February 6, 2002, BT North America, Inc. (BT North America) filed a Petition for Clarification of the universal service contribution obligations of non-common carrier video distribution service providers. Specifically, BT North America asks the Commission to clarify that similarly situated entities transmitting video programming on a non-common carrier basis, that do not compete with common carriers, should be exempted from contributing on the basis of revenues derived from these services. Universal service contributions are based on a contributor's interstate and international revenues derived from domestic end users for telecommunications or telecommunications services. The Commission has previously stated that, consistent with section 254(d) of the Act, open video systems, cable leased access, and direct broadcast satellite (DBS) providers must contribute to universal service for revenues derived from the provision of interstate telecommunications services, but are not required to contribute for revenues derived from interstate telecommunications. We also note that broadcasters are not required to contribute to universal service.

BT North America asserts that the Commission's rationale for these exemptions should apply equally to its operations as well as other similarly situated entities. BT North America's Broadcast Division provides ''occasional use'' and ''full time'' broadcast services, including uplink, downlink, and transport portions of video transmission services. BT North America asserts that it does not compete with common carriers. Rather, BT North America argues that its competitors include other providers of satellite video transmission, broadcasters, DBS operators, and cable operators. We seek comment on this petition.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments are due on or before April 9, 2002 and reply comments are due on or before April 19, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* (63 FR 24121, May 1, 1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Acting Secretary, William Caton, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

Parties also must send three paper copies of their filing to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 12th Street SW., Room 5–A422, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

Pursuant to § 1.1206 of the Commission's rules, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are permitted subject to disclosure.

Dated: March 13, 2002.

Katherine L. Schroder,

Chief, Accounting Policy Division.

[FR Doc. 02–6526 Filed 3–18–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1401–DR]

Oklahoma; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Oklahoma, (FEMA–1401–DR), dated February 1, 2002, and related determinations.

EFFECTIVE DATE: March 8, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Oklahoma is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 1, 2002:

Harmon County for Public Assistance.

Payne and Woodward Counties for Categories C through G under Public

Assistance (already designated for Individual Assistance and debris removal and emergency protective measures (Categories A and B), including direct Federal Assistance at 75 percent Federal funding under Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–6575 Filed 3–18–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1405–DR]

Oregon; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oregon (FEMA–1405–DR), dated March 12, 2002, and related determinations.

EFFECTIVE DATE: March 12, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 12, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Oregon, resulting from a severe winter storm with high winds on February 7–8, 2002, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such a major disaster exists in the State of Oregon.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Thomas Davies of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Oregon to have been affected adversely by this declared major disaster:

Coos, Curry, Douglas, Lane, and Linn Counties for Public Assistance.

All counties within the State of Oregon are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–6576 Filed 3–18–02; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[Program Announcement No. AoA–02–04]

Fiscal Year 2002 Program Announcement; Availability of Funds and Notice Regarding Applications

AGENCY: Administration on Aging, HHS.

ACTION: Announcement of availability of funds and request for applications.

SUMMARY: The Administration on Aging announces that under the National Family Caregiver Support Program it will hold a competition to fund grant awards for up to seven (7) projects at a federal share of approximately $150,000–$200,000 per year for a project period of up to two (2) years.

Purpose of Grant Awards: The purpose of these projects is to develop services and systems to sustain the efforts of families and other informal caregivers of older individuals, and grandparents or older individuals who are relative caregivers of children.

Eligibility for Grant Awards and Other Requirements: Applications for funding under this program announcement are limited to organizations with demonstrated expertise in aging and caregiving and the ability to provide the proposed assistance nationwide. Public and private non-profit organizations, including faith-based and community-based organizations, are eligible to apply for these grant awards.

Grantees are required to provide a 25% non-federal match.

DATES: The deadline date for the submission of applications is May 10, 2002.

ADDRESSES: Application kits are available by writing to the U.S. Department of Health and Human Services, Administration on Aging, Office for Community-Based Services, 330 Independence Ave., SW, Washington, DC 20201, by calling 202/619–2575, or online at *www.aoa.gov/egrants/.* Applications must be mailed or hand-delivered to the Office of Grants Management at the same address, or submitted online at *www.aoa.gov/egrants/.*

Dated: March 13, 2002.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 02–6619 Filed 3–18–02; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[Program Announcement No. AoA–02–03]

Fiscal Year 2002 Program Announcement; Availability of Funds and Notice Regarding Applications

AGENCY: Administration on Aging, HHS.

ACTION: Announcement of availability of funds and request for applications.

SUMMARY: The Administration on Aging (AoA) announces that under this program announcement it will hold a competition for ''Senior Medicare Patrol Projects'' for up to 33 projects at a federal share of approximately $160,000 per year for a period of three years.

Purpose of Grant Awards: The purpose of these projects is to test the best ways of using the skills of retired nurses, doctors, accountants and other professionals to train seniors to serve as expert resources to detect and stop health care error, fraud and abuse.

Eligibility for Grant Awards and Other Requirements: Eligibility for grant awards is limited to public state and local agencies or nonprofit agencies, organizations and institutions in the following states and jurisdictions: Alaska, Alabama, Arkansas, Arizona, Colorado, Connecticut, District of Columbia, Delaware, Florida, Georgia, Idaho, Indiana, Kansas, Massachusetts, Maine, Michigan, Montana, New Mexico, Nevada, North Dakota, Ohio, Oklahoma, Oregon, Puerto Rico, Texas, Utah, Vermont, Virginia, and Washington—to carry out cooperative agreement awards to train retired persons to serve in their communities as volunteer expert resources and educators in combating health care error, fraud, and abuse. Faith-based organizations are eligible to apply from the states and jurisdictions listed above.

Grantees are required to provide a 25 percent non-federal match.

DATES: The deadline date for the submission of applications is May 3, 2002.

ADDRESSES: Application kits are available by writing to the Department of Health and Human Services, Administration on Aging, Office of Consumer Choice and Protection, 330 Independence Avenue, SW, Room 4278 Washington, DC 20201. For further information, please contact Doris Summey or Barbara Lewis, at (202) 619–3775 or (202) 619–1351. Applications must be mailed or hand-delivered to the Office of Grants Management at the same address. Applicants should notify AoA by email or fax when the application is mailed. Instructions for electronic mailing of grant applications are available at *http://www.aoa.gov/egrants*

Dated: March 13, 2002.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 02–6618 Filed 3–18–02; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Preliminary Investigation of Health Effects of Occupational Exposures in Paducah Gaseous Diffusion Plant Workers, Program Announcement OH–99–143

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following teleconference meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Preliminary Investigation of Health Effects of Occupational Exposures in Paducah Gaseous Diffusion Plant (PGDP) Workers, Program Announcement OH–99–143.

Times and Dates: 2 p.m.–2:15 p.m., March 26, 2002 (Open), 2:20 p.m.–4 p.m., March 26, 2002 (Closed).

Place: Teleconference number: 513.841.4560.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Deputy Director for Program Management, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of the application received under the Memorandum of Understanding between the Department of Energy and the Department of Health and Human Services.

Note: Due to programmatic issues that had to be resolved, this **Federal Register** Notice is being published less than fifteen days before the date of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Kathleen Goedel, National Institute for Occupational Safety and Health, CDC, 4676 Columbia Parkway, M/S R–6, Cincinnati, Ohio 45226, telephone 513–841–4560.

The Director, Management Analysis and Services Office has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 13, 2002.

Alvin Hall,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–6656 Filed 3–15–02; 11:53 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0062]

Agency Information Collection Activities; Proposed Collection; Comment Request; Premarket Notification for a New Dietary Ingredient

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the procedure by which a manufacturer or distributor of dietary supplements or of a new dietary ingredient is to submit information to FDA upon which it has based its conclusion that a dietary supplement containing a new dietary ingredient will reasonably be expected to be safe.

DATES: Submit written or electronic comments on the collection of information by May 20, 2002.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm.* Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR

1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology. New Dietary Ingredient Premarket Notification—21 CFR 190.6 (OMB Control No. 0910–0330)—Extension

Section 413(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350b(a)) provides that a manufacturer or distributor of dietary supplements or of a new dietary ingredient is to submit information to FDA (as delegate for the Secretary of Health and Human Services) upon which it has based its conclusion that a dietary supplement containing a new dietary ingredient will reasonably be expected to be safe at least 75 days before the introduction or delivery for introduction into interstate commerce of a dietary supplement that contains a new dietary ingredient. FDA's regulations at part 190, subpart B (21 CFR part 190, subpart B) implement these statutory provisions. Section 190.6(a) requires each manufacturer or distributor of a dietary supplement containing a new dietary ingredient, or of a new dietary ingredient, to submit to the Office of Nutritional Products, Labeling, and Dietary Supplements notification of the basis for their conclusion that said supplement or ingredient will reasonably be expected to be safe. Section 190.6(b) requires that the notification include: (1) The complete name and address of the manufacturer or distributor, (2) the name of the new dietary ingredient, (3) a description of the dietary supplements that contain the new dietary ingredient, and (4) the history of use or other evidence of safety establishing that the dietary ingredient will reasonably be expected to be safe.

The notification requirements described previously are designed to enable FDA to monitor the introduction into the food supply of new dietary ingredients and dietary supplements that contain new dietary ingredients, in order to protect consumers from unsafe dietary supplements. FDA uses the information collected under these regulations to help ensure that a manufacturer or distributor of a dietary supplement containing a new dietary ingredient is in full compliance with the act.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
190.6	35	1	35	20	700

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The agency believes that there will be minimal burden on the industry to generate data to meet the requirements of the premarket notification program because the agency is requesting only that information that the manufacturer or distributor should already have developed to satisfy itself that a dietary supplement containing a new dietary ingredient is in full compliance with the act. However, the agency estimates that extracting and summarizing the relevant information from the company's files, and presenting it in a format that will meet the requirements of section 413 of the act will require a burden of approximately 20 hours of work per submission.

This estimate is based on the annual average number of premarket notifications FDA received during the last 3 years (*i.e.,* 1999–2001), which was 23. Twenty-three represents 12 more notifications than the agency received as an annual average during the previous 3-year period (*i.e.,* 1996–1998). Therefore, FDA anticipates a similar upward trend will be seen in the annual average number of notifications it receives during 2002–2004, which is estimated to be 35 (23 + 12 = 35).

Dated: March 5, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–6493 Filed 3–18–02; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Food Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Food Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on scientific issues related to FDA's regulatory responsibilities.

Date and Time: The meeting will be held on April 4, 2002, from 9 a.m. to 6 p.m. and April 5, 2002, from 8:30 a.m. to 2 p.m.

Location: Marriott Hotel, Grand Ballroom, 6400 Ivy Lane, Greenbelt, MD, 301–441–3700.

Contact Person: Catherine M. DeRoever, Center for Food Safety and Applied Nutrition (HFS–6), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2397, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 10564. Please call the Information Line for up-to-date information on this meeting.

Agenda: The purpose of this meeting is to discuss general scientific principles related to quality factors for infant formula. The committee will also be asked to discuss the scientific issues related to the generalization of findings from a clinical study using preterm infant formula consumed by preterm infants to a term infant formula intended for use by term infants.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by April 1, 2002. Oral presentations from the public will be scheduled on April 4, 2002, between approximately 1 p.m. and 6 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 1, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Catherine M. DeRoever at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 14, 2002.

Linda A. Suydam,

Senior Associate Commissioner for Communications and Constituent Relations.

[FR Doc. 02–6620 Filed 3–14–02; 4:50 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–05]

Notice of Proposed Information Collection: Comment Request; Requirements for Single Family Mortgage Instruments

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 20, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, L'Enfant Plaza Building, Room 8001, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Officer of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Requirements for Single Family Mortgage Instruments.

OMB Control Number, if applicable: 2502–0404.

Description of the need for the information and proposed use: The single-family mortgage instruments are the documents used to record the mortgage (or deed of trust) and the mortgage note (or deed of trust note). These are public documents used to protect the interests of the mortgagor and mortgagee.

Agency form number, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The total number hours needed to prepare the information collection is 250,000, the estimated number of respondents is 9,000, the frequency of response varies according to business activity, but generates an estimated 1,000,000 responses per year, and the amount of time needed is 0.25 hours per response.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: March 12, 2002.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 02–6553 Filed 3–18–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Partial Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

Consistent with Departmental policy, 28 CFR 50.7, 38 FR 19029, and 42 U.S.C. 9622(d), notice is hereby given that on February 7, 2002, a proposed Partial Consent Decree (''Decree'') in *United States of America* v. *AlliedSignal Inc., et al.*, Civil Action No. 95–CV–0950–C(Sc), and *United States of America* v. *Niagara Frontier Transportation Authority, Inc., et al.*, Civil Action No. 96–CV–0219C(Sc), was lodged with the United States District Court for the Western District of New York.

In these consolidated actions, the United States sought reimbursement of response costs incurred by the United States in connection with clean up activities at the Bern Metals and Universal Iron and Metals Superfund Sites located in the City of Buffalo, Erie County, New York. The proposed Decree will resolve the United States' claims under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9601 et seq., on behalf of the United States Environmental Protection Agency (''EPA'') against defendants AlliedSignal Inc. (now Honeywell International,

Inc.), General Motors Corporation, National Fuel Gas Distribution Corporation, New York State Electric and Gas Corporation, Niagara Frontier Transportation Authority, and Niagara Frontier Transit Metro System, Inc. relating to the Sites. The settling defendants are alleged to be liable as generators, or sucessors to generators, who arranged for the disposal of hazardous substances at the Sites, pursuant to section 107(a)(3) of CERCLA, 42 U.S.C. 9607(a)(3). The Decree provides that the settling defendants will collectively pay $2,745,585 to the United States in reimbursement of EPA's past response costs incurred at the Sites ($2,002,904.62 for EPA's past response costs at the Bern Metals Site and $742,680 for EPA's past response costs at the Universal Iron and Metals Site).

The Department of Justice will receive, for a period of thirty (30) days from the date of this application, comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *AlliedSignal Inc., et al.*, D.J. Ref. No. 90–11–2–1147, and *United States* v. *Niagara Frontier Transportation Authority, Inc., et al.*, D.J. Ref. No. 90–11–3–1571.

The Decree may be examined at the Office of the United States Attorney, Western District of New York, 138 Delaware Avenue, Buffalo, New York 14202, and at the U.S. Environmental Protection Agency, Region II, 290 Broadway, New York, New York 10007–1866. A copy of the Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $7.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ronald Gluck,

Assistant Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 02–6279 Filed 3–18–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Partial Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

Consistent with Departmental policy, 28 CFR 50.7, 38 FR 19029, and 42 U.S.C. 9622(d), notice is hereby given that on February 7, 2002, a proposed Partial Consent Decree (''Decree'') in *United States of America* v. *AlliedSignal Inc., et al.,* Civil Action No. 95–CV–0950–C(Sc), and *United States of America* v. *Niagara Frontier Transportation Authority, Inc., et al.,* Civil Action No. 96–CV–0219C(Sc), was lodged with the United States District Court for the Western District of New York.

In these consolidated actions, the United States sought reimbursement of response costs incurred by the United States in connection with clean up activities at the Bern Metals and Universal Iron and Metals Superfund Sites located in the City of Buffalo, Erie County, New York, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607. The Decree provides that the settling defendant, Consolidated Rail Corporation (''Conrail''), alleged to be liable under section 107(a)(2) of CERCLA as an owner of a portion of the Bern Metals Site, will deposit into an interest-bearing escrow account, within 30 days of receiving notice of lodging of the Decree, $300,000 in reimbursement of EPA's past response costs incurred at the Bern Metals Site. Within 20 days after receiving notice of entry of the Decree, Conrail shall withdraw and pay to the United States all principal and accrued interest from the designated escrow account.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Allied Signal Inc., et al.,* D.J. Ref. No. 90–11–2–1147, and *United States* v. *Niagara Frontier Transportation Authority, Inc., et al.,* D.J. Ref. No. 90–11–3–1571.

The Decree may be examined at the Office of the United States Attorney, Western District of New York, 138 Delaware Avenue, Buffalo, New York 14202, and at the U.S. Environmental Protection Agency, Region II, 290 Broadway, New York, New York 10007–1866. A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $5.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ronald Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–6280 Filed 3–18–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree, Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Angus Macdonald, et al.,* Civil Action No. 3:01CV00101, was lodged with the United States Court for the Western District of Virginia on March 1, 2002.

The consent decree resolves claims pursuant to section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607(a), for past response costs of more than $3,493,000 incurred for response activities to address the release at the Everdure, Inc. Superfund Site, located in Orange County near Rapidan, Va. The United States filed a complaint in this matter in October, 2001, against four current and former owner/operators at the Site: Amy B. Macdonald, deceased, a former owner of the Site; her son, Angus Macdonald; Majorie T. Macdonald; and Glengary Development Corporation (''GDC''), a corporate entity that currently owns all but 9 acres of the Site. The proposed decree settles that case, and requires the Defendants to sell the GDC property and to pay sixty percent (60%) of the net proceeds from any sale of all or part of that property into a Site Special Account for future work at the Site or reimbursement of the Superfund.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. As a result of the discovery of anthrax contamination at

the District of Columbia mail processing center in mid-October, 2001, the delivery of regular first-class mail sent through the United States Postal Service has been disrupted. Consequently, comments which are addressed to the Department of Justice in Washington, DC and sent by regular, first-class mail through the U.S. Postal Service are not expected to be received in a timely manner. Therefore, comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, and sent (1) c/o Patti Miller, EPA Region III, 1650 Arch Street, Philadelphia, PA 19103; and/or (2) by facsimile to (202) 353–0296; and/or (3) by overnight delivery, other than through the U.S. Postal Service, to Chief, Environmental Enforcement Section, United States Department of Justice, 1425 New York Avenue, NW 13th Floor, Washington, DC 20005. Each communication should refer on its face to *United States* v. *Angus Macdonald, et al.,* DOJ # 90–11–3–06957.

The proposed consent decree may be examined at the office of the United States Attorney for the Western District of Virginia, 105 Franklin Road, SW., Suite One, Roanoke, VA; and the Region III Office of the Environmental Protection Agency, 1650 Arch St., Philadelphia, PA 19103. A copy of the proposed consent decree may be obtained by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax number (202) 616–6584; phone confirmation (202) 514–1547. In requesting a copy, please forward the request and a check in the amount of $9.00 (25 cents per page reproduction cost) payable to the U.S. Treasury, referencing the DOJ Consent Decree Library, *United States* v. *Angus Macdonald, et al.,* DOJ # 90–11–3–06957, to the first-class mail address at EPA Region III or the overnight mail address at DOJ, 1425 New York Avenue, listed above.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–6499 Filed 3–18–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—COVA Technologies Inc.

Notice is hereby given that, on February 11, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), COVA Technologies Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are COVA Technologies, Inc., Colorado Springs, CO; and Celis Semiconductor Corporation, Colorado Springs, CO. The nature and objectives of the venture are to conduct research on ferroelectric nonvolatile memory technologies that will enable dense, ferroelectric memory products based on one-transistor ferroelectric memory cells.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–6500 Filed 3–18–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Ace Wholesale & Trading Co.; Revocation of Registration

On March 16, 2001, the Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) to Ace Wholesale & Trading Company (Ace), located in Lakewood, Washington, notifying it of a preliminary finding that, pursuant to evidence set forth therein, it was responsible for *inter alia* the diversion of large quantities of List I chemicals into other than legitimate channels. Based on these preliminary findings, and pursuant to 21 U.S.C. 824(d) and 28 CFR 0.100 and 0.104, the OTSC suspended Ace's DEA Certificate of Registration, effective immediately, with such suspension to remain in effect until a final determination is reached in these proceedings. The OTSC informed Ace and is owner, Sung Won Hwang (Hwang) of an opportunity to request a hearing to show cause as to why the DEA should not revoke its DEA Certificate of Registration, 004652ALY, and deny any pending applications for renewal or modification of such registration, for reason that such registration is inconsistent with the public interest, as determined by 21 U.S.C. 823(h). The OTSC also notified Ace that, should no request for hearing be filed within 30 days, its right to a hearing would be considered waived.

On March 23, 2001, a copy of the OTSC was served upon Hwang as he was being processed for arrest for Federal offenses relating to the unlawful distribution of pseudoephedrine and conspiracy to manufacture methamphetamine. Since that time, no request for a hearing or any other response was received by DEA from Ace or Hwang nor anyone purporting to represent the registrant in this matter. Therefore, the Administrator of the DEA, finding that (1) thirty days have passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes Ace is deemed to have waived its right to a hearing. After considering relevant material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43 (d) and (e) and 1301.46.

The Administrator finds as follows: List I chemicals are chemicals that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine and ephedrine are List I chemicals that are commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a growing problem in the United States.

A ''regulated person'' is a person who manufactures, distributes, imports, or exports *inter alia* a listed chemical. 21 U.S.C. 802(38). A ''regulated transaction'' is *inter alia* a distribution, receipt, sale, importation, or exportation of a threshold amount of a listed chemical. 21 U.S.C. 802(39). The Administrator finds all parties mentioned herein to be regulated persons, and all transactions mentioned herein to be regulated transactions, unless otherwise noted.

The DEA investigation shows that at the time ACE became registered with the DEA on December 20, 1999, as a distributor of the List I chemicals pseudoephedrine and phenylpropanolamine, Hwang was personally served with the DEA notices informing him that pseudoephedrine and other List I chemicals are diverted for use in clandestine methamphetamine laboratories, and served as well with the notice informing him that possession or distribution of a listed chemical knowing or having reasonable cause to believe that the listed chemical will be used to

manufacture a controlled substance is a violation of the Controlled Substances Act. DEA investigators explained to Hwang the information contained in the notices, and Hwang indicated that he understood.

On or about October 21, 1998, DEA and the Pierce County Sheriff's Department, Lakewood, Washington, initiated an investigation of a retail outlet (Retail Outlet) located in Lakewood, Washington, selling drug-related paraphernalia and List I chemical products containing pseudoephedrine. As set forth below, Ace and Hwang on an unknown number of occasions distributed large quantities of pseudoephedrine products to the Retail Outlet. The DEA investigation revealed that Ace and Hwang consistently failed to keep records of these regulated transactions.

On May 19 and May 30, 2000, undercover DEA investigators purchased a total of 429 bottles of 120 count 60 mg. pseudoephedrine tablets (51,480 dosage units) from the Retail Outlet. DEA Confidential Source information revealed that the owner/operators of the Retail Outlet distributed the pseudoephedrine knowing it would be diverted to the illicit manufacture of methamphetamine. An August 9, 2000, administrative inspection of Ace conducted by DEA revealed this pseudoephedrine had originated from Ace. This same administrative inspection revealed Ace had no records indicating it had ever supplied pseudoephedrine to the Retail Outlet.

On July 1, 2000, the Evergreen State College Police Department of Olympia, Washington, discovered a clandestine methamphetamine laboratory dump site. Several empty bottles of 60 mg. pseudoephedrine recovered from the Dump site were traced back to Ace.

On July 21, 2000, DEA investigators made an undercover purchase of 494 boxes of 48 count 60 mg. pseudoephedrine (23,712 dosage units) from the Retail Outlet. DEA Confidential Source information revealed that the owner/operators of the Retail Outlet distributed the pseudoephedrine knowing it would be diverted to the illicit manufacture of methamphetamine. The August 9, 2000, administrative inspection revealed this pseudoephedrine also originated from Ace.

During the August 9, 2000, inspection, Hwang admitted that a portion of his List I chemical inventory was stored at his residence, because he did not have enough room to store it at his registered address. Hwang's residence is not a registered address, according to DEA's records.

Also during the August 9, 2000, inspection, a DEA investigator obtained Ace's purchase and sales records for a particular lot number of 60 mg. Pseudoephedrine product for the period from July 2000 through close of business on the date of the inspection. A closing inventory of Ace on August 9, 2000, revealed no pseudoephedrine on hand reflecting this lot number. Examination of Ace's records, however, revealed that there should have been an inventory under this lot number of ten cases and 104 boxes (74,112 dosage units) of pseudoephedrine. Thus, Ace could not account for the disposition of this pseudoephedrine. DEA's investigation, however, showed that the lot number of the unaccounted-for pseudoephedrine matched that of the above-referenced July 21, 2000, 494 box undercover purchase from the Retail Outlet.

On August 15, 2000, a clandestine methamphetamine laboratory was discovered in Eatonville, Washington. Empty pseudoephedrine bottles recovered from the site were traced back to Ace.

On September 29, 2000, undercover DEA investigators purchased 240 bottles of 120 count 60 mg. pseudoephedrine tablets (28,800 dosage units) from the Retail Outlet. DEA Confidential Source information revealed that the owner/operators of the Retail Outlet distributed the pseudoephedrine knowing it would be diverted to the illicit manufacture of methamphetamine. The DEA investigation revealed substantial evidence that this pseudoephedrine was provided by Ace.

The review of Ace's records by DEA investigators during the August 9, 2000, inspection showed no List I chemical sales by Ace during the period from December 20, 1999, to August 9, 2000. The DEA investigation revealed, however, at least four separate distributions of pseudoephedrine to a firm not registered with DEA to handle List I chemicals. On May 22, 2000, on June 22, 2000, on July 14, 2000, and on July 28, 2000, Ace distributed 72 bottles of 120 count 60 mg. pseudoephedrine tablets (totaling 288 bottles/34,560 dosage units). The two July distributions combine to exceed the monthly cumulative threshold for pseudoephedrine, and therefore are considered regulated transactions. 21 CFR 1310.04. Each of these distributions was made to a firm that was not registered with DEA to handle List I chemicals.

The DEA investigation revealed Ace was distributing quantities of pseudoephedrine to retail establishments far in excess of legitimate demand. For example, Ace supplied a small retail convenience store with 144 boxes of 48 count 60 mg.pseudoephedrine tablets (6,912 dosage units) per month between July 1, 2000, and September 2, 2000. Thereafter, commencing October 1, 2000, Ace doubled the supply to the convenience store until a State criminal search warrant was served upon the convenience store November 9, 2000. While these do no appear to have been regulated transactions, they are indicative of Ace's excessive distribution practices. During the execution of this warrant, a post-dated sales receipt for pseudoephedrine from Ace was discovered, as well as a falsified Ace sales invoice.

Therefore, pursuant to 21 U.S.C. 824(d), the Administrator of the DEA issued an immediate suspension of Ace's DEA Certificate of Registration. While the above-cited evidence provides ample grounds for an immediate suspension pursuant to section 824(d), these grounds also provide the basis for the revocation of Ace's DEA Certificate of Registration.

Pursuant to 21 U.S.C. 824(a), the Administrator may revoke a registration to distribute List I chemicals upon a finding that the registrant has committed such acts as wound render his registration under section 823 inconsistent with the public interest as determined under that section. Pursuant to 21 U.S.C. 823(h), the following factors are considered in determining the public interest:

(1) Maintenance of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance with applicable Federal, State, and local law;

(3) Any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

Like the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Administrator may rely on any one or combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. See, e.g. Energy Outlet, 64 FR 14269 (1999). See also Henry J. Schwartz, Jr., M.D., 54 FR 16422(1989)

Regarding the first factor, maintenance of effective controls against diversion, the Administrator finds substantial evidence in the investigative file that Ace and Hwang participated in the illegal diversion of pseudoephedrine having reasonable cause to believe it would be asked to manufacture methamphetamine. The DEA investigation showed Ace was distributing large quantities of pseudoephedrine to the Retail Outlet and other establishments that appeared far in excess of legitimate demand. In addition, Ace failed to follow recordkeeping requirements, as evidenced by its lack of records reflecting numerous regulated distributions to the Retail Outlet and its failure to account for 74,112 dosage units of pseudoephedrine during the August 9, 2000, inspection, in violation of 21 U.S.C. 842(a)(10); 830(a)(1); and 21 CFR 1310.03 (failure to keep required records); and the July 14 and July 28, 2000, 72 bottle distributions to the firm not registered with DEA to handle List I chemicals, in violation of 21 U.S.C. 842(a)(9); 830(a)(3); and 21 CFR 1310.07 (failure to obtain proof of identity). Therefore, the Administrator finds Ace and Hwang failed to maintain effective controls against the diversion of pseudoephedrine.

Regarding the second factor, compliance with applicable Federal, State, and local law, the investigative file in this matter reveals that Ace significantly violated applicable Federal law pertaining to recordkeeping and identification of parties to regulated transactions, as set foth in factor one, above. In addition, Ace failed to make required reports of suspicious listed chemical transactions pursuant to 21 U.S.C. 830(b)(1)(A), in that it was distributing pseudoephedrine to convenience stores in quantities that appeared far in excess of legitimate demand.

Ace and Hwang were notified regarding the dangers of List I chemical diversion by DEA investigators both orally and *via* written official notices. Therefore, these series of excessive distributions also were in violation of 21 U.S.C. 841(d)(2) (since redesignated 841(c)(2)), since Ace and Hwang had reasonable cause to believe the pseudoephedrine would be diverted to the manufacture of methamphetamine.

The Administrator also finds the November 9, 2000, search of the convenience store revealed substantial evidence that Ace participated in falsifying documents in an attempt to conceal the frequency and quantity of pseudoephedrine it was distributing to the convenience store referenced above. The post-dated Ace sales receipt and the falsified Ace sales invoice seized during the search are evidence of violations of 21 U.S.C. 843(a)(4)(A) and 830(a) and 21 CFR 1310.03.

Finally, the investigative file reflects that Hwang was arrested March 23, 2001 in Seattle, Washington, by the Federal Bureau of Investigation on charges involving the illegal distribution of pseudoephedrine and conspiracy to manufacture methamphetamine.

Regarding the third factor, any prior conviction record under Federal or State laws relating to controlled substances or chemicals, there is no evidence in the investigative file that Ace or Hwang has any record of convictions under Federal or State laws relating to controlled substances or chemicals.

Regarding the fourth factor, past experience in the manufacture and distribution of chemicals, the Administrator finds substantial evidence in the investigative file that Hwang failed to maintain adequate controls in handling and distributing the List I chemical pseudoephedrine, and actively participated in the illegal trafficking of pseudoephedrine, knowing that it was being diverted to the manufacture of methamphetamine, as set forth in the first and second factors, above.

Regarding the fifth factor, such other factors relevant to and consistent with the public safety, the Administrator finds the November 9, 2000, search of the convenience store revealed substantial evidence that Ace participated in falsifying documents in an attempt to conceal the frequency and quantity of pseudoephedrine it was distributing to the convenience store referenced above, in violation of 21 U.S.C. 843(a)(4)(A) and 830(a) and 21 CFR 1310.03. The Administrator finds this willingness to falsify records, taken together with Ace's and Hwang's demonstrated disregard of the statutory law and regulations concerning the distribution and recordkeeping requirements pertaining to List I chemicals, makes questionable Ace's and Hwang's commitment to the DEA statutory and regulatory requirements designed to protect the public from the diversion of controlled substances and listed chemicals. Aseel Incorporated, Wholesale Division, 66 FR 35459 (2001); Terrence E. Murphy, 61 FR 2841 (1996).

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration 004652ALY, previously issued to Ace Wholesale & Trading company, be, and it hereby is revoked; and any pending applications for renewal or modification of said registration be and hereby are, denied. This order is effective April 18, 2002.

Dated: March 11, 2002.

Asa Hutchinson,

Administrator.

[FR Doc. 02–6568 Filed 3–18–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Aqui Enterprises; Denial of Application

On or about November 6, 2000, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Socorro Keenan, Aqui Enterprises (Aqui), of Las Vegas, Nevada, notifying her of an opportunity to show cause as to why the DEA should not deny her application, dated July 22, 1997, for a DEA Certificate of Registration as a distributor of the List I chemicals ephedrine and pseudoephedrine, and also deny her request for modification of her application, dated September 25, 1997, and also revoke her exemption to distribute such List I chemicals, pursuant to 21 U.S.C. 823(h), as being inconsistent with the public interest. The order also notified Aqui that, should no request for hearing be filed within 30 days, the right to a hearing would be waived.

The OTSC was received by Aqui on or about November 21, 2000, and DEA received on December 12, 2000, a written response with attachments from Ms. Keenan dated November 21, 2000. This response contained various objections to the allegations set forth in the OTSC. The response neither requested nor waived Aqui's right to a hearing.

By letter dated December 19, 2000, an Administrative Law Judge (ALJ) sent a letter to Aqui requesting that it clarify whether or not it was exercising its right to a hearing, and granting until January 14, 2001, to respond.

On January 24, 2001, the ALJ issued an ''Order Terminating Proceedings'' indicating that Aqui had not responded to the December 19, 2000, letter and referring the matter to the Administrator for final decision without a hearing.

Therefore, the Administrator of the DEA, finding that no response having been received to the ALJ's December 19, 2000, letter, concludes that Aqui has waived its right to a hearing. After

considering relevant material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46. Aqui's letter and attachments received December 12, 2000, will be considered as ''a written statement regarding [Aqui's] position on the matter of fact and law . . . and shall be considered in light of the lack of opportunity for cross-examination in determining the weight to be attached to matters of fact asserted therein.'' 21 CFR 1316.49.

The Administrator finds as follows. List I chemicals are chemicals that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine and ephedrine are List I chemicals that are commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a growing problem in the United States.

A ''regulated person'' is a person who manufactures, distributes, imports, or exports *inter alia* a listed chemical. 21 U.S.C. 802(38) A ''regulated transaction'' is *inter alia* a distribution, receipt, sale, importation, or exportation of a threshold amount of a listed chemical. 21 U.S.C. 802(39). The Administrator finds all parties mentioned herein to be regulated persons, and all transactions mentioned herein to be regulated transactions, unless otherwise noted.

The Administrator finds that during a preregistration inspection conducted by DEA investigators September 25, 1997, the investigators discovered that Aqui's proposed registered address was a mail box. When the investigators informed Ms. Socorro Keenan (Ms. Keenan), sole owner and operator of Aqui, that the proposed registered address would be insufficient to comply with DEA security requirements, Keenan submitted a written modification dated the same day requesting to change the proposed registered address on Aqui's application. An inspection of the modified proposed registered location by DEA investigators revealed that this location was a small office with no room for storage of listed chemical products and no adequate security as required by 21 CFR 1309.71. Ms. Keenan stated to investigators that she did not feel she needed secure storage, because she planned to distribute the List I chemical products immediately upon receipt.

During the September 25, 1997, preregistration inspection, DEA investigators informed Ms. Keenan *via* both written and oral notice that pseudoephedrine is often diverted to the illicit manufacture of methamphetamine.

On or about October 10, 1997, Aqui sold approximately 60 cases of pseudoephedrine to an individual who paid cash and who took delivery of the chemical in a rented U–Haul truck. In addition, Aqui failed to keep required records of this regulated transaction.

On or about November 5, 1997, Aqui sold approximately 20 cases of pseudoephedrine to an individual who paid cash and who took delivery of the chemical in a rented U–Haul truck. Aqui failed to keep required records of this regulated transaction.

On or about November 11, 1997, Aqui purchased 20 cases of pseudoephedrine, and stored the chemical at an unregistered location with inadequate security.

On or about November 12, 1997, Aqui again purchased 20 cases of pseudoephedrine and attempted to store the chemical at an unregistered location without adequate security.

Pursuant to 21 U.S.C. 823(h), the Administrator may deny an application for a DEA Certificate of Registration if he determines that granting the registration would be inconsistent with the public interest. Section 823(h) requires the following factors be considered:

(1) Maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance by the applicant with applicable Federal, State, and local law;

(3) Any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

Like the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Administrator may rely on any one or combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. *See, e.g. Energy Outlet,* 64 FR 14269 (1999). *See also Henry J. Schwartz, Jr., M.D.,* 54 FR 16422 (1989).

The Administrator finds factors one, two, four, and five relevant to this application.

Regarding factor one, the maintenance of effective controls against the diversion of listed chemicals, the DEA pre-registration inspection documented inadequate security arrangements at the modified proposed registered location for the storage of listed chemical products, in that Aqui had no facility for storage of List I chemical products, and no security system. During the September 25, 1997, pre-registration inspection, in response to DEA investigator concerns about security, Ms. Keenan stated she had no need for storage, since she would distribute the chemicals immediately upon receipt. The Administrator finds this dubious proposition unacceptable, for obvious security concerns. Regardless of the feasibility of this scheme, Ms. Keenan had previously just told DEA investigators that Aqui had no customers.

On November 12, 1997, DEA investigators seized a total of 40 cases of pseudoephedrine from Ms. Keenan at a previously undisclosed storage unit in Las Vegas. She had already placed 20 cases of pseudoephedrine into the storage unit, and was in the act of unloading an additional 20 cases when the seizure occurred. The storage unit was not a DEA registered location, nor was it listed on Aqui's application. Moreover, the storage unit was not a secure location for the storage of List I chemicals. The DEA investigators noted that Ms. Keenan used counter-surveillance driving techniques when delivering the additional 20 cases of pseudoephedrine to the storage unit. When asked by DEA investigators what she intended to do with the 40 cases of pseudoephedrine, Ms. Keenan stated that, while she had no customers at the time, she was ''building a supply.'' In response to further questioning, however, Ms. Keenan admitted the money for the purchase of the pseudoephedrine was provided by an individual to whom she had already sold at least 80 cases of pseudoephedrine, who paid cash and picked up the pseudoephedrine in a rented U–Haul truck. Ms. Keenan never properly verified the identity of this individual, but the DEA investigation revealed that the business address given by this individual was nothing but a mail drop. Ms. Keenan admitted she had never visited the purported business. DEA's investigation further revealed the address was the same as that of another business involved in a separate DEA investigation resulting in the seizure of 287 cases pseudoephedrine. DEA

investigators also discovered Aqui had an order pending with a chemical distributor for an additional 60 cases of pseudoephedrine.

Ms. Keenan stated to investigators that she met this individual at a trade show in August, 1997, and at that same show, she was approached by a friend of this individual, who gave her a cashier's check for $7,000 for a future purchase of pseudoephedrine.

Information in the investigative file reveals that Aqui purchased at least 160 cases of pseudoephedrine in an approximately 14 week period, while Ms. Keenan state to DEA investigators on several separate occasions that Aqui had no customers. The DEA investigation revealed Aqui failed to keep required records of these regulated transactions.

Based on this evidence, the Administrator finds Aqui and Ms. Keenan failed to maintain and exercise effective controls against the diversion of pseudoephedrine.

Regarding factor two, compliance by the applicant with applicable Federal, State, and local law, the Administrator finds Aqui and Ms. Keenan violated applicable Federal law in the following primary instances.

The DEA investigation revealed Aqui and Ms. Keenan failed to keep required records of regulated transactions, in violation of 21 U.S.C. 830(a) and 21 CFR 1310.03(a). The investigation showed that on at least eight occasions, Aqui had cumulatively purchased at least 160 cases of 60 mg. 60 count bottled pseudoephedrine tablets in twenty case increments between July 30 and November 12, 1997. One case contains 144 bottles for a dosage unit total of 8640 per case and 172,800 per 20 case order. Each purchase was a regulated transaction, for which Aqui and Ms. Keenan failed to keep required records.

Aqui and Ms. Keenan also violated 21 CFR 1310.07 by failing to properly identify other parties to regulated transactions. Ms. Keenan stated to DEA investigators she had sold 80 cases of pseudoephedrine to an individual she met at a trade show. She stated that he approached her and asked if she could obtain pseudoephedrine for him. He had no apparent interest in any other of the usual convenience store products. As previously set forth in the discussion of the first factor, above, this individual paid cash for his purchases and picked up the pseudoephedrine in a rented U-Haul truck. The local business address provided by this individual was only a mail drop, and, as set forth above, another purported business using this same address was involved in a DEA investigation that culminated in the seizure of 287 cases of pseudoephedrine. Ms. Keenan admitted to investigators that she had never visited this purported business. In addition, at the same trade show a friend of this individual gave Ms. Keenan a $7,000 cashier's check for a future purchase of pseudoephedrine.

The Administrator finds the circumstances surrounding the distributions set forth above to be extremely suspicious, and therefore concludes that Ms. Keenan and Aqui also violated 21 U.S.C. 830(b)(1)(A) and 21 CFR 1310.05(a)(1) by failing to report a suspicious method of payment and delivery.

The Administrator finds also that Aqui and Ms. Keenan violated 21 U.S.C. 841(d)(2) (since redesignated 841(c)(2)) in that she distributed a listed chemical having reasonable cause to believe that the chemical would be used to manufacture a controlled substance, to wit, methamphetamine. Information in the investigative file reveals that, on at least three separate occasions, Ms. Keenan received a written official DEA notice warning of the dangers of diversion of pseudoephedrine to the illicit manufacture of methamphetamine. The first notice was provided at the time of the pre-registration inspection, September 25, 1997. At this time, DEA investigators also provided oral notice of the dangers of diversion, as well as a discussion of all recordkeeping and reporting requirements pertaining to listed chemical handlers, and Ms. Keenan stated at that time that she understood. A second written notice was provided by certified mail October 30, 1997. A third notice was provided at the time of the November 12, 1997, seizure of the 40 cases from the unregistered, undisclosed storage unit. The Administrator finds the suspicious circumstances concerning Aqui's distribution of pseudoephedrine set forth above provided Ms. Keenan reasonable cause to believe that the chemicals were being diverted to the illicit manufacture of methamphetamine.

The Administrator also finds that Aqui and Ms. Keenan violated 21 CFR 139.23 by storing pseudoephedrine in an unregistered location (and which location was not set forth in her application). On November 12, 1997, DEA investigators seized 40 cases of pseudoephedrine from a previously undisclosed storage unit, as set forth in factor one, above.

Regarding factor four, the applicant's past experience in the distribution of chemicals, the DEA investigation revealed that Aqui and Ms. Keenan have violated applicable Federal law and regulations relating to the handling and distribution of listed chemicals, as set forth in factor two, above.

Regarding factor five, other factors relevant to and consistent with the public safety, the DEA investigators charged with investigating Aqui's application reported that Ms. Keenan was not cooperative in providing necessary information to properly investigate the application. For instance, despite repeated requests by the investigators, Ms. Keenan failed to provide customer and supplier lists. When she finally provided a customer list (in response to the November 12, 1997 seizure, in the opinion of the DEA investigators), a telephone call to one or two customers per every page of the 69-page list revealed that none of those called were in fact customers of Aqui, or had ever heard of Aqui or Ms. Keenan. Ms. Keenan also refused to provide the quantities of List I chemical products, she previously has purchased, and further refused to provide any information concerning the recipients of these chemicals.

Additionally, the Administrator finds substantial evidence that Ms. Keenan was not being candid with investigators concerning her handling and distribution of pseudoephedrine. On November 12, 1997, 40 cases of pseudoephedrine were seized from Ms. Keenan by DEA from a previously undisclosed storage unit. DEA investigators noted that Ms. Keenan used counter-surveillance driving techniques when delivering additional pseudoephedrine to the storage unit. At the time of this seizure, she repeated her earlier statements that she had no customers, and was just ''building a supply.'' Yet, upon further questioning, Ms. Keenan admitted she already had distributed 80 cases of pseudoephedrine to the individual she met at the trade show, as set forth above. As previously stated, the Administrator finds the circumstances of these distributions extremely suspicious. Additionally, also at the time of this seizure, DEA investigators noted that the storage unit contained only pseudoephedrine and old furniture. Since Ms. Keenan described Aqui as a supplier of novelty items to convenience stores, the investigators queried Ms. Keenan regarding the whereabouts of her stock of convenience store items. Ms. Keenan stated that she had some samples, but had given them away. The Administrator finds Ms. Keenan's explanation suspicious, and furthermore finds scant evidence in the investigative file that Aqui did in fact supply convenience stores with novelty items.

Therefore, the Administrator finds substantial evidence in the investigative file that Ms. Keenan exhibited a lack of candor regarding her handling and distribution of the List I chemical pseudoephedrine. The Administrator finds this lack of candor, taken together with Aqui's and Ms. Keenan's demonstrated disregard of the statutory law and regulations concerning the distribution, reporting, and recordkeeping requirements of List I chemicals, makes questionable Aqui's and Ms. Keenan's commitment to the DEA statutory and regulatory requirements designed to protect the public from the diversion of controlled substances and listed chemicals. *Aseel Incorporated, Wholesale Division,* 66 FR 35459 (2001); *Terrence E. Murphy,* 61 FR 2841 (1996).

The Administrator further finds that Ms. Keenan's letter dated November 21, 2000, in response to the OTSC contained only unsupported allegations, and pursuant to 21 CFR 1309.53(b), the Administrator concludes that this evidence is entitled to little, if any, weight. The gist of the letter appeared to concern the November 12, 1997, seizure of the 40 cases of pseudoephedrine. Ms. Keenan requested DEA ''to return the cash value in today's market for what was taken from the secured/locked location on November 12, 1997.'' She then referenced two DEA case and seizure numbers. Documentation in the investigative file indicates that the seized pseudoephedrine is undergoing forfeiture proceedings pursuant to 21 U.S.C. 881. The Administrator finds that the forfeiture proceedings will allow Ms. Keenan sufficient due process to assert whatever legitimate interest she may have in the seized pseudoephedrine, and furthermore, that such a determination is beyond the scope of this Final Order.

Therefore, for the above-stated reasons, the Administrator concludes that it would be inconsistent with the public interest to grant the application of Aqui.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration and also the request for modification of the application dated September 25, 1997, submitted by Aqui Enterprises, be denied; and furthermore that the exemption of Aqui Enterprises to distribute List I chemicals is hereby revoked. This order is effective April 18, 2002.

Dated: March 11, 2002.

Asa Hutchinson,

Administrator.

[FR Doc. 02–6572 Filed 3–18–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

David W. Linder; Denial of Application

On or about June 27, 2001, the Deputy Assistant Administration, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to David Linder (Linder), residing in Bullhead City, Arizona, notifying him of an opportunity to show cause as to why the DEA should not deny his application, dated May 14, 2000, for a DEA Certificate of Registration as a distributor of the List I chemical gamma-butrolactone (GBL), pursuant to 21 U.S.C. 823(h), as being inconsistent with the public interest. The order also notified Linder that, should no request for hearing be filed within 30 days, the right to a hearing would be waived.

The OTSC was returned, marked ''Unclaimed.'' The OTSC was re-mailed to Linder *via* first class mail. This letter was also returned to DEA, marked ''Return to Sender—Attempted—Not Known—No Forwarding Address.'' Since that time, no further response has been received from the applicant nor any person purporting to represent the applicant. Therefore, the Administrator of the DEA, finding that (1) thirty days having passed since the attempted delivery of the Order to Show Cause at the applicant's last known address, and (2) no request for a hearing having been received, concludes that Linder is deemed to have waived his right to a hearing. After considering relevant material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Administrator finds as follows. List I chemicals are chemicals that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). The List I chemical GBL has industrial uses as a solvent. GBL is also a precursor chemical and is readily synthesized into the Schedule I controlled substance GBH. Schedule I controlled substances have no accepted medical use, and are highly subject to abuse. 21 U.S.C. 812(b)(1).

The Administrator finds that during the June 29, 2000, pre-registration inspection, Linder stated to DEA investigators that he intended to distribute GBL to computer companies for use as an organic cleaner. Linder further stated he was engaged in pond construction. Linder failed to indicate that he had any knowledge of or experience in the manufacturing, handling, or distributing of listing chemicals. Linder also stated he desired the DEA registration in part because he wished to recover a quantity of GBL previously seized from him by the State of Arizona.

During a follow-up interview on August 3, 2000, Linder was unable to provide DEA investigators with a list of prospective customers, or any method of identifying potential customers. He also stated he was not sure what percentage of his business would involve GBL. Linder stated he used GBL to clean computer parts and in making artificial ponds.

Also at the August 3, 2000, interview, Linder stated he does not advertise and does not operate any Web sites. On August 31, 2000, a DEA investigator spoke with a Las Vegas, Nevada, Narcotics Detective, who stated Linder was arrested in Las Vegas for possession of 350 gallons of GBL and GHB. The Detective also stated Linder sells nationwide on the internet, and that Linder is linked to the overdose death of a girl in Long Beach, California. The Detective further stated that, at the arrest of a suspected GBH trafficker, some of Linder's chemicals were found in the arrestee's residence. DEA investigators subsequently learned that Linder does in fact maintain a web site, called ''AE—Alternative Entropy'' wherein he *inter alia* advertises as ''novelty items'' and ''for research purposes only'' various allegedly psychedelic and hallucinogenic substances.

The DEA investigative file further reveals that on May 16, 1975, Linder was convicted by a Federal Court of Distribution of a Controlled Substance and Sale of Dangerous Drugs, as the result of the illegal sale to an undercover DEA agent of approximately one ounce of MDMA and in excess of one pound of hashish. Linder was sentenced to six years imprisonment for his conviction.

In addition, on March 23, 2000, Linder was arrested by the Bullhead City, Arizona, Police Department on three State felony drug charges, including Dangerous Drug Manufacturing, a Dangerous Drug violation, and a Drug Paraphernalia violation. When questioned concerning

this arrest, Linder states to DEA investigators that the listed chemical product seized from him by State law enforcement officers was for use in ''artificial rock making.''

Linder was previously arrested on or about October 28, 1999, in Laughlin, Nevada, for distribution of GHB and other charges. GBL and other chemicals were seized at that time of this arrest and during the subsequent search of a storage shed. Linder was also involved in the distribution of GHB kits (containing the ingredients for GHB and instructions for preparation) and other allegedly psychedelic substances.

During a June 29, 2000, conversation with a DEA investigator concerning his pending application, Linder stated concerning his 1975 felony drug conviction that he had ''learned his lesson'' and that he ''has never done anything illegal since that time.'' The DEA investigation reveals, however, that Linder's law enforcement record includes, in addition to the 1975 Federal drug felony conviction, seven arrests and two convictions for various offenses, spanning the time period from 1994 up to the March 23, 2000, Bullhead City Police Department arrest for three State felony drug charges.

Pursuant to 21 U.S.C. 823(h), the Administrator may deny an application for a DEA Certificate of Registration if he determines that granting the registration would be inconsistent with the public interest. Section 823(h) requires the following factors be considered:

(1) Maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance by the applicant with applicable Federal, State, and local law;

(3) Any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

Like the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Administrator may rely on any one or combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. *See e.g. Energy Outlet,* 64 FR 14269 (1999). *See also Henry J. Schwartz, Jr., M.D.,* 54 FR 16422 (1989).

The Administrator finds factors two, three, four, and five relevant to this application.

Regarding factor two, compliance by the applicant with applicable Federal, State, and local law, the Administrator finds substantial evidence in the DEA investigative file that Linder has violated applicable Federal and State law. First, Linder was convicted on May 16, 1975, of Distribution of a Controlled Substance and Sale of a Dangerous Drug, and sentenced to six years imprisonment. In addition, the DEA investigative file contains substantial evidence that Linder violated Nevada State law by manufacturing GBL, resulting in his related arrest on or about October 28, 1999. The DEA investigative file also contains substantial evidence that Linder violated Arizona State law in that he operated a clandestine laboratory for manufacturing GBL at his residence and also possessed a quantity of GBL that was seized by law enforcement officials, resulting in Linder's March 23, 2000, arrest by the Bullhead City, Arizona, Police Department for Dangerous Drug Manufacturing, a Dangerous Drug Violation, and a Drug paraphernalia Violation.

Regarding factor three, any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law, the Administrator finds Linder was convicted May 16, 1975, in a Federal Court for Distribution of a Controlled Substance and Sale of a Dangerous Drug, and sentenced to six years imprisonment.

Regarding factor four, the applicant's past experience in the distribution of chemicals, the DEA investigation revealed substantial evidence that Linder violated Nevada and Arizona State law related to his handling of listed chemicals, as set forth in factor two, above.

Regarding factor five, other factors relevant to and consistent with the public safety, the Administrator finds that during a June 29, 2000, conversation with a DEA investigator concerning his pending application, Linder stated concerning his 1975 felony drug conviction that he had ''learned his lesson'' and that he ''has never done anything illegal since that time.'' The DEA investigation reveals, however, that Linder's record includes in addition to the 1975 Federal drug felony conviction, seven arrests and two convictions for various offenses, spanning the time period from 1994 up to the March 23, 2000, Bullhead City, Arizona, Police Department arrest for three State felony drug charges. The Administrator finds this lack of candor, taken together with Linder's Federal controlled substance-related criminal conviction and his apparent disregard of Arizona and Nevada State laws regarding the handling of listed chemicals, makes questionable Linder's commitment to the DEA regulatory requirements designed to protect the public from the diversion of controlled substances and listed chemicals. *Aseel Incorporated, Wholesale Division*, 66 FR 35459 (2001); *Terrence E. Murphy*, 61 FR 2841 (1996).

In addition, despite repeated requests from DEA investigators, Linder was unable or unwilling to supply a proposed customer list for distribution of GBL, and thus failed to provide any evidence purporting to show a legitimate market for his distribution of this product.

Therefore, for the above-stated reasons, the Administrator concludes that it would be inconsistent with the public interest to grant the application of Linder.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration submitted by David W. Linder be denied. This order is effective April 18, 2002.

Dated: March 11, 2002.

Asa Hutchinson,

Administrator.

[FR Doc. 02–6571 Filed 3–18–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Seaside Pharmaceutical Co.; Revocation of Registration

On July 29, 2000, the Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) to Seaside Pharmaceutical Company (Seaside), located in Fort Lauderdale, Florida, notifying it of a preliminary finding that, pursuant to evidence set forth therein, it was responsible for *inter alia* the diversion of large quantities of List I chemicals into other than legitimate channels. Based on these preliminary findings, and pursuant to 21 U.S.C. 824(d) and 28 CFR 0.100 and 0.104, the OTSC suspended Seaside's DEA Certificate of Registration, effective immediately, with

such suspension to remain in effect until a final determination is reached in these proceedings. The OTSC informed Seaside and its owner/president and sole employee Thomas Narog (Narog) of an opportunity to request a hearing to show cause as to why the DEA should not revoke its DEA Certificate of Registration, 004422SMY, and deny any pending applications for renewal or modification of such registration, and further deny its application dated March 28, 2000, as an exporter of List I chemicals, for reason that such registration is inconsistent with the public interest, as determined by 21 U.S.C. 823(h). The OTSC also notified Seaside that, should not request for hearing be filed within 30 days, its right to a hearing would be considered waived.

On July 31, 2000, a DEA Special Agent served the OTSC upon Narog's attorney as Narog made his initial appearance before a U.S. Magistrate Judge in connection with charges related to his handling of List I chemicals. Since that time, no request for a hearing or any other response was received by DEA from Seaside or Narog nor anyone purporting to represent the registrant in this matter. Therefore, the Administrator of the DEA, finding that (1) thirty days have passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes Seaside is deemed to have waived its right to a hearing. After considering relevant material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43 (d) and (e) and 1301.46.

The Administrator finds as follows. List I chemicals are chemicals commonly used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.22(a). Pseudoephedrine, ephedrine, and phyenylpropanolamine are List I chemicals that are commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance, or amphetamine, a Schedule III controlled substance. Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a growing problem in the United States.

A ''regulated person'' is a person who manufactures, distributes, imports, or exports *inter alia* a listed chemical. 21 U.S.C. 802(38). A ''regulated transaction'' is *inter alia* a distribution, receipt, sale, importation, or exportation of a threshold amount of a listed chemical. 21 U.S.C. 802(3). The Administrator finds all parties mentioned herein to be regulated persons, and all transactions mentioned herein to be regulated transactions, unless otherwise noted.

The DEA investigation revealed as follows. During an interview with DEA investigators April 17, 2000, Narog, in the presence of his then-counsel, stated that on four occasions since July, 1999, he shipped 60 mg. pseudoephedrine tablets to Israel. Per Narog, each of the four shipments contained at least 100,000 bottles of 60 count 60 mg. pseudoephedrine tablets. In response to questions from DEA investigators, Narog stated he had no domestic customers, and that all of his pseudoephedrine product ''went out to Israel.'' Narog was informed that these exportations were illegal, and he was provided with official DEA notices concerning the dangers of diversion and statutes and regulations pertaining to the handling of List I chemicals. In addition, evidence obtained by DEA indicates that at least on one subsequent occasion, in or around July, 2002, a number of boxes containing pseudoephedrine shipped by Seaside to Israel were seized by the Israeli police. DEA records indicate Seaside never has been authorized by DEA to export pseudoephedrine.

On April 17, 2000, Narog stated to DEA investigators that Seaside had no domestic customers. Yet, on March 21, 2000, over 5,000 bottles of pseudoephedrine product manufactured exclusively for Seaside were seized from two individuals in California. Both individuals have been charged with criminal offenses related to the unlawful possession of pseudoephedrine.

Narog further stated to DEA investigators that Seaside had no domestic customers prior to June, 2000. Yet the DEA investigation revealed Narog made numerous shipments of pseudoephedrine to an individual located in Los Angeles, California. On several occasions in March and April, 2000, DEA investigators conducted surveillance at the Shurgard Storage Center (Shurgard) where Seaside maintained its DEA registered location. The investigators observed Narog and others load boxes of pseudoephedrine into U-Haul trucks. All of the pseudoephedrine was subsequently diverted to the illicit market.

On one occasion, DEA surveillance of Shurgard on March 27, 2000, showed Narog and a U-Haul truck arriving separately at warehouse unit 1352. Narog and two other individuals loaded boxes of pseudoephedrine into the back of the U-Haul truck. The U-Haul truck was driven to a Home Depot parking lot, where it met another truck, and both trucks then proceeded to another storage facility, where the pseudoephedrine was unloaded into another storage unit. The next day, March 28, 2000, other individuals loaded several large, unmarked boxes from the storage unit into a vehicle that was eventually followed by surveillance to the Orlando International Airport. The boxes were then shipped to Los Angeles, California, listed as ''grocery supplies.'' While at the airport, an undercover DEA agent posing as an employee of the shipping company met with the individual shipping the pseudoephedrine, who invited the agent to join him in the criminal trafficking of pseudoephedrine. Following continued surveillance, the pseudoephedrine was seized and a number of individuals arrested.

Also on March 28, 2000, DEA investigators observed Narog receive three pallets containing 480 boxes of pseudoephedrine at Shurgard. The shipment was packaged at 48 bottles per box, with 60 60mg. tablets per bottle, for a total of 1,382,000 dosage units of pseudoephedrine. On April 4, 2000, Narog and another individual were observed loading the 480 boxes of pseudoephedrine into a rented U-Haul truck. The truck was driven to another self storage facility and the pseudoephedrine was unloaded into a storage unit at that location. The next day, April 5, 2000, DEA investigators observed an individual load the 480 boxes of pseudoephedrine into another U-Haul truck, that was observed to deliver the pseudoephedrine to the Orlando International Airport. An undercover DEA agent, posing as a shipping company employee, spoke with the individual who was shipping this load of pseudoephedrine. This individual was the same individual who had shipped the March 28, 2000, shipment described above. The individual stated to the undercover DEA agent that he was worried that an arrest that had occurred in California was related to the individual's distribution of pseudoephedrine. The individual further stated that ''the FDA, cops and FBI'' had gone to his residence in California and seized $20,000. When this shipment reached California, surveillance and investigation of the recipients resulted in seven arrests and the seizure of 2,200 pounds of pseudoephedrine and $25,000.

In April, 2000, Narog provided DEA investigators with copies of purchase records for Seaside for the period from September 1, 1999, to March 22, 2000. The records revealed Seaside had received in excess of 17 million dosage units of 60 mg. pseudoephedrine. Narog had stated to DEA investigators that he had no domestic customers prior to

June, 2000, and Seaside never has been authorized to export List I chemicals.

During a July 13, 2000, interview with DEA investigators, Narog stated that the Shurgard unit 1352 at his DEA registered address was the only warehouse unit that he or Seaside leased at the time. The investigation revealed, however, that Narog also leased 206/207, which is a double unit measuring approximately 22 by 33 feet. DEA surveillance revealed thousands of pounds of pseudoephedrine being placed into 206/207. Narog further stated to investigators that, as the sole owner, president, director, and employee of Seaside, he was the only individual with access to unit 1352. DEA surveillance revealed, however, several different individuals accessing both 1352 and 206/207 without Narog, and removing pseudoephedrine that eventually was sent to California or seized in Florida.

The DEA investigation revealed that approximately 36,000 gross pounds of pseudoephedrine was delivered to Seaside's DEA registered address between September 8, 1999, and June 30, 2000.

On August 1, 2000, a seven count indictment was filed against Narog and others, alleging inter alia possession and distribution of the List I chemical pseudoephedrine, knowing and having reasonable cause to believe that the listed chemical would be used to manufacture methamphetamine, in violation of 21 U.S.C. 841(d)(2) and 846.

At the August 8, 2000, pre-detention hearing for Narog and another individual, both Narog and the other individual were denied bail because the judge found they both posed flight risks and were dangers to the community because of the large volume of drugs involved.

Therefore, pursuant to 21 U.S.C. 824(d), the Administrator of the DEA issued an immediate suspension of Seaside's DEA Certification of Registration. While the above-cited evidence provides ample grounds for an immediate suspension pursuant to section 824(d), these grounds also provide the basis for the revocation of Seaside's DEA Certificate of Registration.

Pursuant to 21 U.S.C. 824(a), the Administrator may revoke a registration to distribute List I chemicals upon a finding that the registrant has committed such acts as would render his registration under section 823 inconsistent with the public interest as determined under that section. Pursuant to 21 U.S.C. 823(h), the following factors are considered in determining the public interest:

(1) Maintenance of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance with applicable Federal, State, and local law;

(3) Any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

Like the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Administrator may rely on any one or combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. *See, e.g. Energy Outlet,* 64 FR 14269 (1999). *See also Henry J. Schwartz, Jr., M.D.,* 54 FR 16422 (1989).

Regarding the first factor, maintenance of effective controls against diversion, the Administrator finds substantial evidence in the investigative file that Seaside and Narog actively participated in the illegal diversion of pseudoephedrine, knowing and having reasonable cause to believe it would be used to manufacture methamphetamine. Narog admitted to DEA investigators that he exported hundreds of thousands of bottles of pseudoephedrine to Israel, without being registered to do so. Moreover, Narog was storing thousands of pounds of pseudoephedrine in an unregistered storage unit location that he purposely attempted to conceal from DEA investigators. Narog stated to investigators that he had sole access to the DEA registered storage unit. The investigation revealed, however, that multiple individuals would access both Narog's DEA registered storage unit as well as his other, undisclosed storage unit. The investigation showed pseudoephedrine stored in both units was diverted to the illicit manufacture of methamphetamine.

Regarding the second factor, compliance with applicable Federal, State, and local law, the investigative file in this matter reveals that Seaside significantly violated applicable Federal law in the following primary instances. Narog and Seaside exported hundreds of thousands of bottles of List I chemicals to Israel without being registered to do so, in violation of 21 U.S.C. 843(a)(9); 957(a)(2); and 960(a)(1) and 21 CFR 1309.22.

In addition, although Narog stated to DEA investigators during an April 17, 2000, interview that he had no domestic customers, over 5,000 bottles of a List I chemical pseudoephedrine product manufactured exclusively for Seaside were seized on March 21, 2000, from two individuals in California, who were subsequently charged with criminal offenses relating to the unlawful possession of pseudoephedrine. DEA surveillance also revealed Narog and others were shipping large quantities of pseudoephedrine to individuals located in California, who were diverting the chemical to the illicit manufacture of methamphetamine. The Administrator finds this substantial evidence that Narog and Seaside violated 21 U.S.C. 841(d)(2) (since redesignated 841(c)(2)).

The investigation further revealed Narog was concealing thousands of pounds of pseudoephedrine product in an unregistered storage unit, and this pseudoephedrine was being directly diverted to the manufacture of methamphetamine, in violation of 21 CFR 1309.23.

Finally, Narog was charged in an August 1, 2000, seven count indictment, each count charging Narog with violations of 21 U.S.C. 841(d)(2) (since redesignated as 841(c)(2)) relating to the distribution of pseudoephedrine knowing or having reasonable cause to believe the chemical would be used to illicitly manufacture methamphetamine.

Regarding the third factor, any prior conviction record under Federal or State laws relating to controlled substances or chemicals, there is no evidence in the investigative file that Seaside or Narog has any record of convictions under Federal or State laws relating to controlled substances or chemicals.

Regarding the fourth factor, past experience in the manufacture and distribution of chemicals, the Administrator finds substantial evidence in the investigative file that Narog failed to maintain adequate controls in distributing the List I chemical pseudoephedrine, and actively participated in the illegal trafficking of pseudoephedrine, knowing that it was being diverted to the manufacture of methamphetamine, as set forth in the first and second factors, above.

Regarding the fifth factor, such other factors relevant to and consistent with the public safety, the Administrator finds substantial evidence in the investigative file that Narog cannot be trusted with the responsibilities of a DEA registrant. Narog stated during the July 13, 2000, interview with DEA investigators that the Shurgard unit

1352 at his DEA registered address was the only warehouse unit that he or Seaside leased at the time. The investigation revealed, however, that Narog also leased an additional storage unit 206/207. Narog intentionally concealed the existence of this additional storage until from DEA investigators. DEA surveillance revealed thousands of pounds of pseudoethedrine being placed into 206/207. Narog further stated to investigators that, as the sole owner, president, director, and employee of Seaside, he was the only individual with access to unit 1352. DEA surveillance revealed, however, several different individuals accessing both 1352 and 206/207 without Narog, and removing pseudoephedrine that eventually was diverted to California or seized in Florida.

The Administrator finds this lack of candor, taken together with Seaside's and Narog's demonstrated cavalier disregard of the statutory law and regulations concerning the distribution, handling, and exportation requirements pertaining to List I chemicals, makes questionable Seaside's and Narog's commitment to the DEA statutory and regulatory requirements designed to protect the public from the diversion of controlled substances and listed chemicals. Aseel Incorporated, Wholesale Division, 66 Fed. Reg. 35459 (2001); Terrence E. Murphy, 61 FR 2841 (1996).

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 1.014, hereby order that DEA Certificate of Registration 004422SMY, previously issued to Seaside Pharmaceutical Company, be, and it hereby is, revoked; and any pending applications for renewal or modification of said registration, be, and hereby are, denied. Furthermore, the application of Seaside Pharmaceutical Company dated March 28, 2000, for registration as an exporter of List I chemicals is also hereby denied.

The order is effective April 18, 2002.

Dated: March 11, 2002.

Asa Hutchinson,

Administrator.

[FR Doc. 02–6569 Filed 3–18–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Southern Illinois Wholesale, Inc.; Denial of Application

On or about June 27, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Southern Illinois Wholesale, Inc. (SIW), located in Dongola, Illinois, notifying it of an opportunity to show cause as to why the DEA should not deny its application, dated December 3, 2000, for a DEA Certificate of Registration as a distributor of the List 1 chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, pursuant to 21 U.S.C. 823(h), as being inconsistent with the public interest. The order also notified SIW that, should no request for hearing be filed within 30 days, the right to a hearing would be waived.

The OTSC was received July 16, 2001, as indicated by the signed postal return receipt. Since that time, no further response has been received from the applicant nor any person purporting to represent the applicant. Therefore, the Administrator of the DEA, finding that (1) thirty days having passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that SIW is deemed to have waived its right to a hearing. After considering relevant material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Administrator finds as follows. List I chemicals are chemicals that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine, ephedrine, and phenylpropanolamine are List I chemicals that are commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance, or amphetamine, a Schedule III controlled substance. Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a growing problem in the United States.

The Administrator finds that on or about December 3, 2000, an application was submitted by and on behalf of SIW, by George W. Howard (Howard) for DEA registration as a distributor of the above-referenced List I chemicals.

During the February 23, 2001, pre-registration inspection, Howard informed DEA investigators that he proposed to sell various products from his parent's home, including List I chemical products. Howard states he had started out two yeas before, operating bubble gum vending machines, and had recently arranged through an internet consulting company to sell novelty items to retailers. He further stated that some small retail stores in the Southern Illinois and Cape Girardeau, Missouri, area would buy his other products only if he could provide List I chemical products. Howard alleged to DEA investigators that retailers in general would only do business with him if he could provide listed chemical products. He stated he wished to compete in the market that Four Seasons and Heartland held. Both of these distributors previously held DEA registrations that were surrendered during DEA actions against the companies. The DEA investigations into those companies revealed the markets they served had histories or ordering listed chemical products in quantities far greater than legitimate demand would require. DEA took action against the registrations of those two companies because the investigations showed a substantial amount of this pseudoephedrine was being diverted to the illicit manufacture of methamphetamine.

During the pre-registration inspection, Howard was unclear regarding what licenses he needed to conduct business in either Illinois or Missouri. He further stated he was using his parent's basement for storage of his products. DEA investigators noted that Howard had a tendency to delete telephone messages left for him before listening to the entire message; this resulted in a number of miscommunications between Howard and the local DEA office. In addition, at the preregistration inspection Howard was unable to locate information previously sent to him by DEA investigators concerning the responsibilities of a listed chemical registrant. He admitted that he had not been taking the registration process very seriously. Howard stated he wanted to handle List I chemical products because his competition does; and also because he wanted to recoup the cost of obtaining a DEA registration.

Pursuant to 21 U.S.C. 823(h), the Administrator may deny an application for a DEA Certificate of Registration if he determines that granting the registration would be inconsistent with the public interest. Section 823(h) requires the following factors he considered:

(1) Maintenance by the applicant of effective controls against diversion of

listed chemicals into other than legitimate channels;

(2) Compliance by the applicant with applicable Federal, State, and local law;

(3) Any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

Like the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Administrator may rely on any one or combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. *See, e.g. Energy Outlet,* 64 FR 14269 (1999). *See also Henry J. Schwartz, Jr., M.D.,* 54 FR 16422 (1989).

The Administrator finds factors four and five relevant to this application.

Regarding factor four, the applicant's past experience in the distribution of chemicals, the DEA investigation revealed that Howard has no previous experience in handling listed chemicals or distributing listed chemical products. Moreover, he has limited experience in the retailing business, having begun his business about two years previously to his application.

Regarding factor five, other factors relevant to and consistent with the public safety, the Administrator finds that due to the applicant's lack of experience in handling listed chemicals, his desire to distribute to a market that prior DEA investigations show has a history of excessive distributions, his desire to distribute to customers who's primary interests appear to be List I chemical products, and his apparent unpreparedness to take on the responsibilities of a listed chemical registrant, the Administrator concludes it would be inconsistent with the public interest to grant this application.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration submitted by Southern Illinois Wholesale be denied. This order is effective April 18, 2002.

Dated: March 11, 2002.

Asa Hutchinson,

Administrator.

[FR Doc. 02–6570 Filed 3–18–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: 60-day Notice of Information Collection Under Review; Guidelines on Producing Master Exhibits for Asylum Applications.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 20, 2002.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: Extension of a currently approved collection.*

(2) *Title of the Form/Collection:* Guidelines on Producing Master Exhibits for Asylum Applications.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form Number; File No. OMB–04. Office of International Affairs, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Not-for-profit institutions. Master Exhibits are a means by which credible information on country conditions related to asylum applications are made available to Asylum and Immigration Officers for use in adjudicating cases.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 20 responses at 80 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,600 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard. A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW, Suite 1600, Washington, DC 20530.

Dated: March 13, 2002.

Richard A. Sloan,

Director, Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–6503 Filed 3–18–02; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities; Extension of Existing Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Emergency Federal Law Enforcement Assistance.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 20, 2002.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of the appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: Extension of a currently approved collection.*

(2) *Title of the Form/Collection:* Emergency Federal Law Enforcement Assistance.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form Number; (File No. OMB–06). Office of General Counsel, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local or Tribal Government. Section 404(b) of the Immigration and Nationality Act provides for the reimbursement to States and localities for assistance provided in meeting an immigration emergency.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10 responses at 30 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 300 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW, Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: March 13, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–6504 Filed 3–18–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Freedom of Information/Privacy Act Request; Form G–639.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 20, 2002.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Freedom of Information/Privacy Act Request.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form G–639. FOIA/PA Section, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is provided as a convenient means for persons to provide date necessary for identification of a particular record desired under FOIA/PA.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100,000 responses at 15 Minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 25,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance

Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: March 12, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–6505 Filed 3–18–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Data Relating to Beneficiary of Private Bill; Form G–79A.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 20, 2002.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: Extension of a currently approved collection.*

(2) *Title of the Form/Collection:* Data Relating to Beneficiary of Private Bill.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form G–79A. Investigations Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information is needed to report on Private Bills to Congress when requested.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 responses at 1 Hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 100 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: March 12, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–6505 Filed 3–19–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Bureau of Prisons

Annual Determination of Average Cost of Incarceration

AGENCY: Bureau of Prisons, Justice.

ACTION: Notice.

SUMMARY: The fee to cover the average cost of incarceration for Federal inmates is $21,601.

EFFECTIVE DATE: March 19, 2002.

ADDRESSES: Office of General Counsel, Federal Bureau of Prisons, 320 First St., NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, (202) 307–2105.

SUPPLEMENTARY INFORMATION: 28 CFR part 505 allows for assessment and collection of a fee to cover the average cost of incarceration for Federal inmates. We calculate this fee by dividing the number representing Bureau facilities' obligation (excluding activation costs) by the number of inmate-days incurred for preceding fiscal year, and then by multiplying the quotient by 365 (or, since 2000 was a leap year, by 366).

Under § 505.2, the Director of the Bureau of Prisons has reviewed the amount of the fee and has determined that, based upon fiscal year 2000 data, the fee to cover the average cost of incarceration for Federal inmates is $21,601.

Kathleen Hawk Sawyer,

Director, Bureau of Prisons.

[FR Doc. 02–6592 Filed 3–18–02; 8:45 am]

BILLING CODE 4410–05–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–038)]

NASA Advisory Council, Aerospace Technology Advisory Committee, Aviation Safety Reporting System Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a NASA Advisory Council, Aerospace Technology Advisory Committee, Aviation Safety Reporting System Subcommittee (ASRSS) meeting.

DATES: Tuesday, April 9, 2002, 9 a.m. to 5 p.m.; and Wednesday, April 10, 2002, 9 a.m. to 5 p.m.

ADDRESSES: National Aeronautics and Space Administration, Ames Research Center, Building 262, Room 100, Moffett Field, CA 94035.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Connell, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 650/960–6059.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Special security arrangements must be made through Ms. Connell one week prior to the meeting. Agenda topics for the meeting are as follows:

—Report on Aviation Safety Reporting System

—New Emerging Safety Issues

—NASA Future Flight Central

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Sylvia K. Kraemer,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–6496 Filed 3–18–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–039)]

NASA Advisory Council, Aerospace Technology Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aerospace Technology Advisory Committee (ATAC).

DATES: Wednesday, April 17, 2002, 8:30 a.m. to 5 p.m.; and Thursday, April 18, 2002, 8:30 a.m. to 12 Noon.

ADDRESSES: National Aeronautics and Space Administration, Room 7H46, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Mary-Ellen McGrath, Office of Aerospace Technology, National Aeronautics and Space Administration, Washington, DC 20546–0001, 202/358–4729.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Aerospace Technology Enterprise Overview

—Revolutionize Aviation

—Advanced Space Transportation

—Pioneer Revolutionary Technology

—Commercial Technology

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Sylvia K. Kraemer,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–6497 Filed 3–18–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–040)]

NASA Advisory Council, Space Science Advisory Committee, Structure and Evolution of the Universe Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration, (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Science Advisory Committee, Structure and Evolution of the Universe Subcommittee.

DATES: Tuesday, April 9, 2002, 8:30 a.m. to 5 p.m., and Wednesday, April 10, 2002, 8:30 to 5 p.m.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Conference Room 9H40, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Code SB, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–4452.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Status of the Space Science Enterprise

—Structure and Evolution of the Universe Overview:

—Budget, Ongoing Programs, Future Activities

—Structure and Evolution of the Universe Roadmap and Strategic Planning

—Structure and Evolution of the Universe Missions Update

—Plans for the Structure and Evolution of the Universe Working Groups

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Sylvia K. Kraemer,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–6498 Filed 3–18–02; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–368]

Entergy Operations, Inc.; Arkansas Nuclear One, Unit 2; Draft Environmental Assessment and Finding of No Significant Impact Related to a Proposed License Amendment To Increase the Maximum Thermal Power Level

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of opportunity for public comment.

SUMMARY: The NRC has prepared a draft environmental assessment (EA) and finding of no significant impact as its evaluation of a request by Entergy Operations, Inc. (Entergy or the licensee) for a license amendment to increase the maximum thermal power level at Arkansas Nuclear One, Unit 2 (ANO–2) from 2815 megawatts thermal (MWt) to 3026 MWt. This represents a power increase of approximately 7.5 percent for ANO–2. As stated in the NRC staff's February 8, 1996, position paper on the Boiling-Water-Reactor Extended Power Uprate Program, the NRC staff will prepare an environmental impact statement if it believes an extended power uprate (EPU) will have a significant impact on the environment. The staff did not identify a significant environmental impact from the licensee's proposed EPU at ANO–2; therefore, the NRC staff is documenting its environmental review in an EA and finding of no significant impact. Also, in accordance with the February 8, 1996, staff position paper, the draft EA and finding of no significant impact is being published in the **Federal Register** for a 30-day public comment period.

DATES: The comment period expires April 18, 2002. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only of comments that are received on or before April 18, 2002.

ADDRESSES: Submit written comments to Chief, Rules Review and Directives Branch, U.S. Nuclear Regulatory Commission, Mail Stop T–6 D69,

Washington, DC 20555–0001. Written comments may also be delivered to 11545 Rockville Pike, Rockville, Maryland 20852, from 7:45 a.m. to 4:15 p.m. on Federal workdays. Copies of written comments received will be available electronically at the NRC's Public Electronic Reading Room (PERR) link on the NRC Homepage, *http://www.nrc.gov,* through the Agencywide Documents Access and Management System (ADAMS) or at the NRC Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas W. Alexion, Office of Nuclear Reactor Regulation, at Mail Stop O–7 D1, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at (301) 415–1326, or by e-mail at *twa@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC is considering issuance of an amendment to Facility Operating License No. NPF–6, issued to Entergy for the operation of ANO–2, located in Pope County, Arkansas.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow Entergy, the operator of ANO–2, to increase its electrical generating capacity at ANO–2 by raising the maximum reactor core power level from 2815 MWt to 3026 MWt. This change is approximately 7.5 percent above the current maximum licensed power level for ANO–2. The change is considered an EPU because it would raise the reactor core power level at least 7 percent above the original licensed power level. ANO–2 has not submitted a previous power uprate application. The EPU is accomplished by increasing the heat output of the reactor, thereby increasing the steam flow to the turbine for which increased feedwater flow is needed. As a result, more heat will be rejected to the circulating water and cooling tower complex. Increased heat load to the cooling tower will cause evaporative losses to increase. Therefore, cooling tower makeup, supplied from Lake Dardanelle, will increase due the increased evaporative losses.

The proposed action is in accordance with Entergy's application for amendment dated December 19, 2000, as supplemented by letters dated May 30, June 20, 26 (two letters), 27, and 28, July 3 and 24 (two letters), August 7, 13, 21, 23, and 30, September 14, October 1, 12 (two letters), 17, 30 (two letters), and 31, November 9, 16 (three letters), and 17, and December 5, 6 (two letters), 10, and 20, 2001, and January 14, 15, and 31, February 7 (two letters), and March 1, 2002.

The Need for the Proposed Action

The purpose and need for the EPU for ANO–2 is to provide an option that allows for power generation capability beyond the current nuclear power plant operating license to meet future system generating needs, as such needs may be determined by State, utility, and where authorized, Federal (other than NRC) decisionmakers. The ANO–2 steam generators were replaced in 2000 due to primary water stress corrosion cracking (PWSCC). In evaluating the options for the replacement steam generators (RSGs), Entergy determined that the RSGs would be capable of supporting a 7.5 percent thermal uprate which would increase the licensed core thermal power level to 3026 MWt. The proposed action to increase the licensed core thermal power level to 3026 MWt is based on Entergy's operational goal of increasing electrical generating capacity. According to Entergy, summer peak temperatures in the South challenge the ability of Entergy and other power producers to meet peak load demands, and nuclear power has been shown to be a reliable energy source during these peak periods.

In addition, Entergy states that there is an ongoing need for existing Entergy system generating capacity, including that provided by ANO–2. Entergy also states that load growth is expected to further increase the system's resource requirements. In view of the foregoing, Entergy determined that the EPU for ANO–2 would provide an economically sound choice with no significant impact to the environment.

Environmental Impacts of the Proposed Action

The effects of an ANO–2 EPU have been comprehensively evaluated by the NRC staff. The NRC staff, as set forth below, has concluded that the increase in the rated core thermal power can be accomplished without significant impact on the environment.

The environmental impacts of ANO–2 have been described in (1) the Final Environmental Statement (FES), dated June 1977 (NUREG–0254); (2) the Power Uprate Licensing Report (PULR), which is Enclosure 5 to the EPU application dated December 19, 2000, as supplemented; and (3) the June 26 and December 10, 2001, and January 15, 2002, responses to NRC requests for additional information (RAI). On January 31, 2000, Entergy submitted a supplement to its environmental report supporting the license renewal of Arkansas Nuclear One, Unit 1 (ANO–1), which resides adjacent to ANO–2. Responses to NRC RAIs regarding the environmental report for license renewal were submitted on June 26, July 31 and September 21, 2000. The staff evaluation of that action was documented in NUREG–1437, Supplement 3, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Regarding Arkansas Nuclear One, Unit 1,'' September 2000 (Supplement 3). Supplement 3 addresses many balance-of-plant site features that are common to ANO–1 and ANO–2. Supplement 3 was cited in Enclosure 5 of the December 19, 2000, license application in instances where site characteristics common to both ANO–1 and ANO–2 are unchanged by the EPU.

The original operating license for ANO–2 allowed a maximum reactor power level of 2815 MWt. Based upon on its independent analyses of the non-radiological and radiological impacts, as described in more detail below, the staff has determined that the environmental impacts of the proposed EPU are essentially unchanged from the environmental impacts previously evaluated in the staff's FES and, as common to both units, Supplement 3. The EPU does not involve extensive changes to plant systems that directly or indirectly interface with the environment. Additionally, no changes are necessary to the National Pollutant Discharge Elimination System (NPDES) permit issued by the Arkansas Department of Environment Quality (ADEQ), formerly the Arkansas Department of Pollution Control and Ecology.

Non-Radiological Impacts

The following contains the NRC staff's analysis of the non-radiological environmental impacts of the proposed EPU on land use, water use, waste discharges, terrestrial and aquatic biota, transmission facilities, and social and economic conditions at ANO–2.

Land Use Impacts

The proposed EPU would not modify land use at the site or have impacts on lands with historic or archeological significance. The licensee states that it has no plans to construct any new facilities or alter the land around existing facilities, including buildings, access roads, parking facilities, laydown

areas, onsite transmission and distribution equipment, or power line rights-of-way in conjunction with the proposed EPU. The EPU would not significantly affect the storage of materials, including chemicals, fuels, and other materials stored above or under the ground. The EPU would not alter the aesthetics of the site. Therefore, the conclusions in Supplement 3 for impacts on land use, that are common to ANO–1 and ANO–2, and the conclusions on land use impacts in FES Section 5–2 augmented by information in the PULR and the June 26 and December 10, 2001, and January 15, 2002, RAI responses, will remain valid under the proposed EPU conditions.

Noise was not addressed in the FES. However, FES Section 5.2 notes that Arkansas Nuclear One (ANO) is located on 1,164 acres and FES Section 2.2.2 states that the ''* * * station has altered the land use in Pope County, primarily through the conversion of 430 acres to an industrial site. Only 150 acres actually are being disturbed. * * * The total acreage of the land affected by the construction and operation of ANO is extremely small. Most of the changes in land use have occurred with the construction and operation of Unit 1 * * *'' Supplement 3, Section 2.1 states that ''[t]he ANO site is located on a peninsula formed by Lake Dardanelle, and three sides of the site are surrounded by lake water.'' The two nearest residences are ''* * * approximately 3 and 1.2 miles, respectively, from the Unit 2 containment building centerline * * *.'' (ANO–2 Environmental Report (ER) Section 2.2.3.2. The ANO–2 ER was submitted on March 1, 1974, and amended on July 11 and December 13, 1974, June 13, October 6 and December 19, 1975, and June 21 and September 8, 1976.) The EPU will not change the character, sources, or energy of noise generated at ANO–2. Modified structures, systems and components (SSCs) necessary to implement the proposed EPU will be installed within existing plant buildings and no noticeable increase in ambient noise levels within the plant is expected.

Water Use Impacts

The following is the NRC staff's evaluation of ground and surface water use as environmental impacts of water usage at ANO–2. Ground and surface water use impacts are also discussed in the ''Radiological Impacts'' section below.

Groundwater Use

As stated in the RAI response to the NRC staff dated June 26, 2001, ANO–1 and ANO–2 do not use any groundwater. Therefore, the EPU will have no non-radiological effects on groundwater.

Surface Water Use

The EPU is accomplished by increasing the heat output of the reactor, thereby increasing the steam flow to the turbine for which increased feedwater flow is needed. The licensee has stated that, as a result, more heat will be rejected to the circulating water and cooling tower complex. Increased heat load to the cooling tower will cause a slight increase in evaporative losses. Therefore, cooling tower makeup, supplied from Lake Dardanelle, will slightly increase due the increased evaporative losses.

While the EPU will require increased water use, the licensee has stated that ANO–2 will not use more water from the lake than permitted. ANO–2 has a contract with the U.S. Corps of Engineers that allows water to be withdrawn from the lake at an average rate of 22 ft^3/sec; withdrawals can exceed this average without an adverse environmental impact. An average evaporation rate of 22 ft^3/sec (9,900 gpm) and maximum evaporation rate of 27 ft^3/sec (11,900 gpm) was analyzed in FES Section 5.3.4. PULR Section 10.4.1.2, stated that the maximum cooling tower make-up for evaporation will increase from 12,180 (27.1 ft^3/sec) to 13,020 gpm (29.0 ft3/sec) under EPU conditions. However, by allowing the cooling tower cycles of concentration to increase from 3.5 to 3.8, still a low concentration value, cooling tower evaporation at design conditions will be about 11,600 gpm (25.8 ft^3/sec). (While water will also be withdrawn from the lake at a rate of 4,150 gpm (9.2 ft^3/sec) to satisfy blowdown needs, this water is returned to the lake.) Cooling tower design conditions continue to be 81.0 °F wet bulb temperature (Wbt) and 37.0 percent relative humidity. These are conservative values. The meteorological worst day on record, July 17, 1934, reflects a worst average 4-hour Wbt and relative humidity of 82.4 °F and 59.20 percent, respectively. The Wbt during this worst 4-hour period exceeds the tower design temperature by only 1.4 °F and the relative humidity was 22.2 percent higher than design.

The limits on withdrawal (*i.e.,* consumption via evaporation) from Lake Dardanelle are based on economics. By withdrawing from the lake, less stream flow is available to flow through Corps of Engineers' hydroelectric generation plants. The licensee compensates the Corps of Engineers for reduction of the flow of the stream (Lake Dardanelle), and the resultant power generation losses to its hydroelectric projects (see FES Section 5.3.4), and will continue to do so for any additional water withdrawal from Lake Dardanelle as a result of the EPU under the terms of the contract.

Surface water hydrology is discussed in ER Sections 2.5.1 and 5.1.3, and FES Section 2.3.2. The EPU results in no increase in the water use permitted. In addition, any changes would be subject to approval by the ADEQ and subject to the NPDES permit. Accordingly, the NRC staff finds that the licensee's conclusions that ANO–2 ''cooling water facilities will have no adverse effects on the local environment, agriculture, housing, roads, airports, and other facilities,'' and that ''* * * measures are being provided to control the formation of slime and algae in the circulating water system, without causing unnecessary harm to aquatic life and biota,'' remains true for the EPU. In addition, FES Section 2.3.2 statements remain unaffected by the EPU. See the discussion below on drift regarding replacing chlorination with bromination at ANO–2.

Waste Discharge Impacts

The NRC staff evaluated the environmental impacts such as cooling tower fogging, icing, drift, noise, chemical discharges to surface water, sanitary waste discharges, blowdown, thermal plume spread, temperature of the lake, cold shock to aquatic biota, hazardous waste effluents, and air emissions that were presented in the FES. The NRC staff, as set forth below, finds that the proposed EPU causes no significant change to the FES evaluations and conclusions relating to waste discharge.

Cooling Tower Fogging, Icing, Drift

The ANO–2 cooling tower is discussed extensively in FES Section 5.4. Entergy's predecessor prepared the ANO–2 ER and submitted its seventh and final amendment attached to a September 8, 1976, letter. As stated in Section 10.1 of the ER, several types of cooling systems such as a cooling pond, a spray pond, a mechanical draft cooling tower, and dry cooling towers were evaluated before a natural draft cooling tower was selected as the best option.

Fogging, Icing and Drift

The licensee has stated in ER Section 10.1.6.3.C, that based on studies done at the Keystone Station in Pennsylvania, ''[f]logging and icing were not problems in the area surrounding these towers.'' This ER section also noted that '' * * * the physical conditions at the Arkansas

Nuclear One site were comparable to the installation at Pennsylvania, and the winters less severe.'' The NRC staff found that fogging and icing caused by cooling tower evaporation and drift has either a ''minimal'' or no effect on ground transportation, air transportation, and water transportation, and is not affected by the EPU.

In Section 10.4.1.2 of the PULR, the increase in circulating water makeup rate is approximately 840 gpm (1.87 ft^3/sec) due to increased evaporation. As stated above, makeup due to evaporation will increase. However, PULR Section 10.4.1.4 states that the circulating water flow rate actually decreased slightly after the condenser was refurbished during a recent refueling outage (2R13). Since drift is a function (*i.e.,* is some fractional amount) of circulating water flow rate, the NRC staff finds that the drift due to the proposed EPU will not exceed that evaluated in the FES.

FES Section 5.4.1.1 assesses cooling tower drift. In this section, the licensee states that ''[c]hlorides were selected by the staff as the primary component of TDS [total dissolved solids] which may cause potential vegetation damage above certain deposition rates.'' The chlorination system for biological control was revised to include a bromination process for the circulating water systems on both ANO–1 and ANO–2 in early 1990. Chlorination was abandoned in 1991 in lieu of the preferred bromination process. This approach was discussed in a follow-up ANO response to Generic Letter 89–13, ''Service Water System Problems Affecting Safety-Related Equipment,'' in 1992.

Since drift has not increased and the evaporation increase is relatively small, the NRC staff finds that the conclusions of the ER and FES regarding fogging, icing, and drift are not altered due to the proposed EPU.

Chemical and Sanitary Discharges:

Surface water and wastewater discharges are regulated by the ADEQ. The NPDES permit is periodically reviewed and reissued by the ADEQ. The present NPDES permit for ANO–2 authorizes discharges from nine outfalls, only one of which will be affected by the EPU. The one affected outfall is the cooling tower blowdown that is addressed below.

The use of chemicals and their subsequent discharge to the environment will not change significantly as a result of the EPU. The cooling tower concentration cycle will remain a low concentration value (3.8). Therefore, the NRC staff concludes that concentration of pollutants in the effluent stream will remain low.

Sanitary wastes are described in ER Section 3.7.1 and ANO–2 Safety Analysis Report Section 9.2.4.2. Sanitary wastes from ANO–2 are discharged directly to the ANO–2 sewage treatment plant in accordance with a permit issued by the ADEQ. Since there is no increase in the ANO staff as a result of the EPU, there is no increase in sanitary waste. Therefore, the EPU requires no changes to the sanitary waste systems or to the parameters regulated by the NPDES permit.

Blowdown

The NRC staff evaluated blowdown, which is discussed in PULR Section 10.4.1.2. As discussed in the ANO–2 Safety Analysis Report Section 10.4.5, Circulating Water, the cooling tower blowdown system, which discharges through the Unit 1 discharge flume, maintains the concentration of the circulating water below the solubility limit of calcium sulfate, thereby preventing condenser tube scale precipitation.

FES Section 5.3.2 evaluated the concentrating effect of evaporation of cooling tower water. The FES states that ''[s]ubstances brought into the circulating water system with the makeup will be concentrated by a factor which will range from 3 to 14 due to evaporation of the water in the cooling tower.'' The licensee states that the EPU will not increase the number of cooling tower concentration cycles beyond this range. Cycles of concentration will remain at the lower end of the range cited, as discussed below. Therefore, the NRC staff concludes that current water appropriation limits are maintained and the conclusions in the FES will remain valid under the EPU conditions.

As stated in the section above, additional cooling tower evaporation will require a small (1.87 ft^3/sec) increase in cooling tower makeup rate. However the blowdown rate will only increase slightly or be kept at the current rate. With blowdown rate at the current rate, cooling tower cycles of concentration will increase by about 0.3 from approximately 3.5 to 3.8. The effect is negligible with either maintaining the current blowdown rate by increasing cycles of concentration or with increasing blowdown. This is because the blowdown is normally mixed with the ANO–1 circulating water system discharge, which has a flow rate of 383,000 gpm (853 ft^3/sec) with two of the four circulating water pumps in operation. Mixing of the blowdown with the Unit 1 circulating water is discussed in FES summary and conclusion paragraph 3.b and Section 5.3.2.

There are no blowdown flow limitations established in ANO NPDES Permit Number AR0001392, issued by ADEQ. Other parameters such as pH, free available chlorine, and total zinc will continue to be monitored in accordance with the permit to ensure that State water quality standards are met.

Thermal Plume Spread and Temperature of Lake Dardanelle

These two topics are discussed in PULR Section 10.4.1.3. As stated above, the ANO–2 cooling tower makeup rate will increase by 840 gpm (1.87 ft^3/sec) from 12,180 (27.1 ft^3/sec) to 13,020 gpm (29.0 ft^3/sec), but blowdown will remain at essentially the current rate. As stated above, this blowdown is normally mixed into the ANO–1 circulating water system discharge, which has a greater flow rate. Since the blowdown temperature will increase by less than 1°F due to the EPU, the effect of the EPU on thermal plume spread and Lake Dardanelle temperature is negligible.

Cold Shock

Cold shock to an aquatic biota occurs when the warm water discharge from a plant abruptly stops because of an unplanned shutdown, resulting in a rapid temperature drop of the discharge water to the lake and possible adverse impact on aquatic biota. The FES does not discuss cold shock caused by an unplanned trip of ANO–2 and the likelihood of an unplanned shutdown is independent of a power uprate. As stated above, the ANO–2 blowdown is normally mixed with the much larger ANO–1 circulating water discharge. An unplanned shutdown of ANO–1 can cause cold shock as evaluated in Supplement 3. However, even if the ANO–1 circulating water pumps are not in service, the amount of ANO–2 blowdown flow into Lake Dardanelle at the ANO–1 circulating water discharge, even at EPU conditions, is too small to cause cold shock. The NRC staff concludes that the risk of aquatic biota mortality by cold shock is not applicable to ANO–2 even at the proposed EPU conditions. Therefore, the discussion in FES Section 5.4.2 regarding winter lake water temperature effects on shad (FES pages 5–8 and 5–9) remains unchanged.

Hazardous Waste Generation and Air Emissions

As stated in PULR Section 10.4.1.4, ANO holds an Air Permit that was issued and is monitored by the ADEQ

Air Division. This permit identifies emission sources at ANO. These sources include, but are not limited to, emergency diesel generators, plant heating boilers, cooling tower, start-up boiler, and bulk storage tanks.

ANO generates hazardous waste from routine plant operations. ANO has a hazardous waste generator's identification number assigned by the ADEQ Solid Waste Division. ANO files Annual Hazardous Waste Reports to the ADEQ.

The EPU has no impact on the quality or quantity of effluents from these sources, and operation under EPU conditions will not reduce the margin to the limits established by the applicable permits.

Terrestrial Biota Impacts

The licensee states that the EPU will not change the previously evaluated land use at ANO and will not disturb the habitat of any terrestrial plant or animal species. There are no significant increases in previously evaluated environmental impacts from cooling tower operation at EPU conditions.

According to a 1999 review by the Arkansas National Heritage Commission documented in Supplement 3, Section 4.6, there are no known rare or endangered plant species within the area of the site boundary. As stated in Supplement 3, Section 4.6, the Arkansas Natural Heritage Commission and the U.S Fish and Wildlife Service have recently (June 2000) stated that no endangered species have been identified at the ANO site or along the transmission rights-of-way. This is consistent with the subsection on ''Fishes'' in FES Section 2.5.1. (See the first paragraph after FES Table 2.4.)

As stated in the June 2001 environmental impact RAI response, the EPU will not disturb land, and land use will remain unchanged. The EPU will not adversely impact the habitat of any terrestrial plant or animal species. There are no deleterious effects on the diversity of biological systems or the sustainability of species due to the EPU, and it does not involve additional changes to the stability or integrity of ecosystems. Therefore, the NRC staff has concluded that the description of the impact on terrestrial ecology, including endangered and threatened plant and animal species, will remain valid for the EPU.

Aquatic Biota Impacts

ANO–1 has a traveling water screen system that protects the suction to both its large circulating water pumps and the much smaller safety-related service water pumps. This same traveling water screen system is used for ANO–2, only for its safety-related service water pumps. The licensee indicates that the EPU does not require larger service water pumps and the pumps were evaluated at their permitted flowrate as part of the NPDES permit. Therefore, the EPU will have no increased impact on the traveling water screen system. The effect of the proposed EPU on the impingement and entrainment of organisms is unchanged and, therefore, remains insignificant. Therefore, the NRC staff conclusions regarding impingement, entrainment, and endangered and threatened aquatic species as discussed in FES Sections 2.5.1 and 5.4.2, and Supplement 3 Section 4.1.1 will remain valid for the EPU. The EPU does not affect ANO's compliance with Sections 316(a) or 316(b) of the Federal Water Pollution Control Act.

Transmission Facility Impacts

Environmental impacts, such as exposure to electromagnetic fields (EMFs) and shock, could result from a major modification to transmission line facilities. However, the licensee states that no change is being made to the existing transmission line design or operation as a result of the EPU. As stated in the licensee's letter dated October 30, 2001, main transformer capacity is adequate to deliver the additional power to the offsite grid. Grid stability is addressed in PULR Section 2.2.1, which cites ANO procedure changes to avoid grid instability with either the Mablevale or Pleasant Hill 500 kV line out of service or during minimum load conditions. These modifications are consistent with Entergy's program of maintaining grid stability. Therefore, the NRC staff concludes that no significant environmental impacts from any changes in transmission facility design and equipment are expected, and the conclusions of FES Sections 3.3, 4.2, and 5.2 remain valid.

The generator output associated with the EPU will slightly increase the current and the EMFs in the onsite transmission line between the main generator and the plant substation. The line is located entirely within the fenced, ANO-controlled boundary of the plant, and neither members of the public nor wildlife are expected to be affected. Exposure to EMFs from the offsite transmission system is not expected to increase significantly, and any such increase is not expected to change any conclusion in FES Section 5.4.1.3 that no significant biological effects are attributable to EMFs from high voltage transmission lines.

ANO–2 transmission lines are designed and constructed in accordance with the applicable shock prevention provisions of the National Electric Safety Code and the EPU will not cause the transmission line design to deviate from these provisions. Therefore, the NRC staff concludes that the expected increase in current attributable to the EPU does not change the conclusion in FES Section 5.4.1.3 (*i.e.,* adequate protection is provided against hazards from electrical shock).

Social, Economic, and Physical Impacts

The NRC staff has reviewed information provided by the licensee regarding the social, economic, and physical impacts associated with the EPU. ANO employs more than 1000 people and is a major contributor to the local tax base. The EPU will not significantly affect the size of the ANO workforce and will have no material effect on the labor force required for future outages. Because the plant modifications needed to implement the EPU will be minor, any increase in sales taxes and local and national business revenues will be negligible relative to the large amount of taxes paid by ANO. It is expected that improving the economic performance of ANO–2 through cost reductions and lower total bus bar costs per kilowatt hour will enhance the value of ANO–2 as a generating asset and lower the probability of early plant retirement.

Early plant retirement would have a negative, long-term impact upon the local economy and the community as a whole by reducing public services, employment, income, business revenues, and property values. Conclusions in FES Section 10 and Supplement 3 regarding social and economic impacts and benefits from ANO remain valid under EPU conditions for ANO–2.

The potential for direct physical impacts of the EPU, such as vibration and dust from construction activities, has been considered. The EPU will be accomplished primarily by changes in station operation and few physical modifications to the facility. These limited modifications will be accomplished without physical changes to transmission corridors, access roads, other offsite facilities, or additional project-related transportation of goods or materials. Therefore, the NRC staff concludes that no significant additional construction disturbances causing noise, odors, vehicle exhaust, dust, vibration, or shock from blasting are anticipated, and the conclusions in FES Sections 4.1 and 5.2 remain valid.

Summary

In summary, the NRC staff has concluded that EPU will not result in a significant change in non-radiological impacts on land use, water use, waste discharges, terrestrial and aquatic biota, transmission facilities, or social and economic factors, and will have no non-radiological environmental impacts other than those evaluated in the FES. Table 1 provides a tabular summary of the non-radiological results.

TABLE 1.—SUMMARY OF NON-RADIOLOGICAL ENVIRONMENTAL IMPACTS OF POWER UPRATE

Land Use Impacts	No change in land use or aesthetics; will not impact lands with historic or archeological significance. No significant impact due to noise.
Water Use Impacts	
Groundwater Use	No groundwater use.
Surface Water Use	There is only a small increase in water withdrawal (i.e., for consumption) rate from the lake. The maximum consumption rate will remain at 27 ft^3/sec which is within permitted levels.
Waste Discharge Impacts	
Cooling Tower Fogging, Icing, Drift	Fogging evaluated as minimal in ER Table 10.1–2. Remains minimal for EPU. No significant change in icing. Icing evaluated as minimal in ER Table 10.1–2. Remains minimal for EPU. No significant change in cooling tower drift per PULR 10.4.1.4.
Chemical and Sanitary Discharges	No expected change to chemical use and subsequent discharge, or sanitary waste systems; cooling towers will operate in the current cycle range. No changes to sanitary waste discharges.
Blowdown	Increase in blowdown discussed in PULR Section 10.4.1.2. Maximum 9.2 ft^3/sec blowdown normally mixed with 853 ft^3/sec circulating water system discharge from ANO–1's once-through cooling system. Blowdown remains within permitted limits.
Thermal Plume Spread and Temperature of Lake Dardanelle.	Negligible and unnoticeable increase in thermal plume size. No discharge temperature increase; lake temperature primarily affected by ANO–1 once-through cooling system; remains in NPDES limit.
Cold Shock	Risk of aquatic biota mortality by cold shock is not applicable to ANO–2; discussed in FES Section 5.4.2.
Hazardous Waste Generation and Air Emissions.	No changes to hazardous waste sources or air emissions.
Terrestrial Biota Impacts	No change in terrestrial biota impacts; no known threatened or endangered species within the site boundary.
Aquatic Biota Impacts	No change in aquatic biota impacts; no known threatened or endangered species in the area of surface water intake or discharge.
Transmission Facility Impacts	No change to transmission line design or operation; main transformer capacity to deliver additional power is unchanged; no significant change in exposure to EMFs.
Social, Economic, and Physical Impacts.	No significant change in the local economy. Few modifications to physical station facility.

Radiological Impacts

The NRC staff has evaluated radiological environmental impacts on waste streams, in-plant and offsite doses, accident analyses, and fuel cycle and transportation factors. The following is a general description of the waste treatment streams at ANO–2 and an evaluation of the environmental impacts. The NRC finds that the proposed EPU will not cause any radiological effects to surface water in the station environs. Even though there is no discussion in the ANO–2 FES regarding radiological impacts on surface water, ER Table 10.1–2 states that the impact on groundwater due to chemical, radionuclides or ''other'' impacts is ''NA'', *i.e.,* not applicable. As stated in ER Section 2.5.2, Ground Water Hydrology, ''[c]ontamination of underground water by radioactivity presupposes the discharge of radioactive liquids from a leaking or ruptured tank into the general environs of the plant site.''

As discussed in ER Section 7.1, the liquid released by the rupture of any tank in the Boron Management System or Waste Management System will be contained within the Auxiliary Building and safely processed. This statement remains true for the EPU as does the FES statements regarding the refueling water tank.

Radiological Waste Stream Impacts

ANO–2 uses waste treatment systems designed to collect, process, and dispose of radioactive gaseous, liquid, and solid waste in accordance with the requirements of 10 CFR part 20 and 10 CFR part 50, Appendix I, ''Numerical Guides for Design Objectives and Limiting Conditions for Operation to Meet the Criterion ''As Low As Is Reasonably Achievable'' for Radioactive Material in Light-Water-Cooled Nuclear Power Reactor Effluents.'' These radioactive waste treatment systems are discussed in the FES. The proposed EPU will not affect the environmental monitoring of these waste streams or the radiological monitoring requirements contained in licensing basis documents. The proposed EPU does not result in any changes in operation or design of equipment in the gaseous, liquid, or solid waste systems. The proposed EPU will not introduce new or different radiological release pathways and will not increase the probability of an operator error or equipment malfunction that will result in an uncontrolled radioactive release. The NRC staff evaluated the changes in the gaseous, liquid, and solid waste streams for radiological environmental impact of the proposed EPU, which are set forth below.

Gaseous Radioactive Waste Impacts

During normal operation, the gaseous effluent systems control the release of gaseous radioactive effluents to the site environs, including small quantities of noble gases, halogens, particulates, and tritium. Routine offsite releases from station operation remain below the limits of 10 CFR part 20 and Appendix I to 10 CFR part 50 (10 CFR part 20 includes the requirements of 40 CFR part 190, ''Environmental Radiation Protection Standards for Nuclear Power Operations''). The gaseous waste management systems include the offgas system and various building ventilation systems. The EPU results in an increase in the release rate that is assumed to be linearly proportional to the power increase. An increase in gaseous effluents is, therefore, assumed to occur. The resultant effluent increases in noble

gas and iodine-131 activity are 4.98E–02 μCi per second and 0.00E+00 μCi per second, respectively. A release rate of zero is assumed for iodine because no iodine has been released over the past three years. The estimated dose values will be below 10 CFR part 50, Appendix I requirements after the EPU. These dose levels are very small and have no significant impact on human health.

Therefore, the conclusions in the FES will remain valid under EPU conditions. Averaging ANO–2's dose for the three most recent years and adding the effect of the EPU on gamma in air and beta in air results in EPU dose rates of 6.92E–04 and 2.15E–03 millirad per year (mrad/yr), respectively. Comparing these dose rates to same-type dose rates in FES Table 5.7 demonstrates that ANO–2 is not only far below the RM–50–2 [1] design objective values of 10 and 20 mrad/yr for gamma and beta, but that the EPU dose rates for gamma and beta are about 86 and 884 times lower, respectively, than the calculated dose for gamma (0.06 mrad/yr) and beta (1.9 mrad/yr) listed in the FES table. A 3-year average allows averaging with and without refueling outages.

Similarly, the 3-year average plus projected EPU dose rate for iodine, tritium, and particules (ITP) is 1.56E–02 millirem per year (mrem/yr). Again, this EPU ITP dose rate is not only far below the RM–50–2 design objective dose rate of 15 mrem/yr, but is also about 192 times lower in dose consequence than the 3.0 mrem/yr calculated dose for ITP in the FES table.

These low dose rates projected for the EPU, when combined with the most recent 3-year average, clearly demonstrate that ANO–2 has been successful in maintaining a very low exposure to plant personnel and the public of both gaseous and liquid (see below) effluent doses. The NRC staff has evaluated the information provided by the licensee and concludes that the estimated dose values for gaseous radioactive wastes will be below Appendix I requirements after the EPU.

Liquid Radioactive Waste Impacts

The liquid radwaste system is designed to process and recycle, to the extent practicable, the liquid waste collected. Annual radiation doses to individuals are maintained below the guidelines in 10 CFR part 20 and 10 CFR part 50, Appendix I. As set forth below, the NRC staff expects that there will be no change in the release policy as a result of the EPU.

The licensee has stated that EPU conditions will not result in significant increases in the volume of fluid from sources flowing into the liquid radwaste system. The reactor will continue to be operated within its present pressure control band. Valve packing leakage volume into the liquid radwaste system is not expected to increase. There will be no changes in reactor cooling pump seal flow or the flow of any other normal equipment drain path. In addition, there will be no impact on the dirty radwaste or chemical waste subsystems of the liquid radwaste system as a result of the EPU, since the operation and the inputs to these subsystems are independent of the power uprate. No significant dose increase from the liquid pathway will result from the EPU. Therefore, the conclusions in the FES are expected to remain valid under EPU conditions, as demonstrated by the following comparison.

Averaging ANO–2's dose for the three most recent years and adding the effect of the EPU on the liquid effluents dose rate to the total body, or any organ, for all pathways results in a calculated dose of 1.04E–2 mrem/yr. Comparing this dose to the liquid effluent doses in FES Table 5.7 demonstrates that ANO–2 is not only far below the RM–50–2 design objective of 5 mrem/year but that the EPU dose rate is about 30 times lower than the calculated dose of 0.31 mrem/yr listed in the FES.

Solid Radioactive Waste Impacts

The solid radioactive waste system collects, monitors, processes, packages, and provides temporary storage facilities for radioactive solid wastes prior to offsite shipment and permanent disposal. Entergy has implemented procedures to assure that the processing and packaging of wet and dry solid radioactive waste and irradiated reactor components at ANO–2 are accomplished in compliance with regulations. Entergy continually tracks the volume of solid radioactive waste generated at ANO; however, the total is not isolated by unit (*i.e.*, ANO–1 or ANO–2). From 1995 to the present, ANO–1 and ANO–2 generated 78,787 ft^3 of low-level radioactive waste for an average of about 12,097 ft^3 per year. In 2000, ANO generated a peak volume of 25,107 ft^3 of low-level radioactive waste. The majority of the waste was generated as a result of the ANO–2 outage involving replacement of the steam generator.

Wet Waste: The largest volume contributors to radioactive solid wet waste are low-specific-activity spent secondary resins. Historically, this has accounted for more than 50 percent of the total volume of wet radioactive waste generated annually. Since the completion of the ANO–2 steam generator replacement outage, no secondary resin has been found to be radioactive. This should not change appreciably with the EPU. The remainder of the wet waste is primary resins, filters, and oil and sludge from various contaminated systems. The EPU will not involve changes in either reactor water cleanup flow rates or filter performance. Therefore, the NRC staff concludes that implementation of the proposed EPU will not have a significant impact on the volume or activity of wet radioactive solid waste at ANO–2.

Dry Waste: Entergy states that it continually tracks the volume of dry radioactive waste generated and continually looks for new ways to minimize the volume of waste generated. Dry waste consists primarily of air filters, contaminated paper products and rags, contaminated clothing, tools and equipment parts that cannot be effectively decontaminated, and solid laboratory wastes. The activity of much of this waste is low enough to permit manual handling. Dry waste is collected in containers located throughout the plant, packaged, and removed to a controlled area for temporary storage. Because of its low activity, dry waste can be stored until enough is accumulated to permit economical transportation to an offsite processing facility for volume reduction or a burial ground for final disposal.

The licensee has stated that the majority of waste generated at ANO is compactible dry active waste (DAW). In light of Entergy's continuing efforts to reduce radioactive wastes at ANO, any projected increase in solid waste generation under the EPU conditions described above would not be significant and is not sufficient to reverse the continuing downward trend in the production and activity of dry wastes. Moreover, due to the nature of the materials in this waste stream, it is not expected to change significantly as a result of the EPU.

Irradiated Reactor Components: Irradiated reactor components such as in-core detectors and fuel assemblies, must be disposed of after the life of the component. The volume and activity of waste generated from spent control element assemblies and in-core detectors may increase slightly under

[1] Guides on Design Objectives proposed by the NRC staff on February 20, 1974; considers doses to individuals from all units on site. From ''Concluding Statement of Position of the Regulatory Staff,'' Docket No. RM–50–2. Feb. 20, 1974, pp. 25–30, U.S. Atomic Energy Commission, Washington, DC.

the higher flux conditions associated with EPU conditions.

Entergy plans to load 80 fresh fuel bundles in the initial refueling of ANO–2 to commence operation under the proposed EPU. This is 12 fresh bundles more than required for the current refueling cycle. The number of irradiated fuel assemblies discharged from the reactor should not increase during subsequent reloads for comparable energy requirements. Accordingly, the NRC staff concludes that implementation of the EPU will not have a significant impact on the volume or activity of the irradiated reactor components at ANO.

Given the information above, NRC staff concludes that the environmental impact due to generation of solid reactor system waste from the proposed EPU is not significant.

Dose Impacts

The NRC staff evaluated in-plant and offsite radiation levels as part of the environmental impacts of the proposed EPU.

In-plant Radiation

Increasing the rated power at ANO–2 may increase the radiation levels in the reactor coolant system (RCS). However, ongoing physical plant improvements and administrative controls, such as shielding, RCS chemistry, and the plant radiation protection program, compensate for these potential increases. Over the past 7 years, Entergy has continued to decrease the occupational dose to workers at ANO–2. In years with refueling outages, the total dose decreased by 55 percent from 175 rem in 1995 to 79 rem in 1999. As a result of the length and scope of the steam generator replacement outage in 2000, doses were higher than in a typical year. Non-outage year doses at ANO–2 illustrate a downward trend from 49 rem in 1996 to 35 rem in 1998 to 9 rem in 2001. The licensee stated that it expects to continue this trend while operating under the EPU conditions.

The plant radiation protection program will maintain individual doses consistent with as-low-as reasonably achievable (ALARA) requirements and well below the established limits of 10 CFR part 20. Routine plant radiation surveys required by the radiation protection program will identify increased radiation levels in accessible areas of the plant and radiation zone postings, and job planning will be adjusted, if necessary. Time within radiation areas is monitored and controlled under the radiation protection program. Administrative limits are provided for occupational dose at levels well below the 10 CFR part 20 limits.

These administrative limits provide a significant margin to regulatory dose limits under normal operating and outage conditions. Administrative dose limits at ANO–2 have not been routinely exceeded under present power conditions.

Offsite Doses

The slight increase in normal operational gaseous activity levels under the EPU will not significantly affect the large margin below the offsite dose limits established by 10 CFR part 20. In addition, doses from liquid effluents, currently low, will remain low under EPU conditions.

The ANO–2 Technical Specifications implement the guidelines of 10 CFR part 50, Appendix I, which are within the 10 CFR part 20 limits. Adjusting current values for projected EPU increases, the offsite dose at EPU conditions is estimated to be 6.92E–04 millirads for noble gas gamma air, 2.15 E–03 millirads for noble gas beta air, and 1.56E–02 millirem to the thyroid for particulates and iodine. Appendix I limits are 10 millirads, 20 millirads, and 15 millirem to the thyroid, respectively. The licensee stated that the offsite dose will continue to be within the technical specification dose limits.

The EPU will not involve significant increases in an offsite dose from noble gases, airborne particulates, iodine, or tritium. Radioactive liquid effluents are not routinely discharged from ANO–2. In addition, as stated by the Radiological Environmental Monitoring Program for ANO–2, radiation exposure from shine dose is not now a significant exposure pathway, and it will not be significantly affected by the EPU.

Therefore, the NRC staff concludes that the estimated doses from both the liquid and gaseous release pathways resulting from EPU conditions are within the design objectives specified by 10 CFR part 50, Appendix I, and the limits of 10 CFR part 20.

Accident Analysis Impacts

The NRC staff reviewed the licensee's analyses and performed confirmatory calculations to verfy the acceptability of the licensee's calculated doses under accident conditions. Based on these calculations, the staff concludes that the proposed EPU would not significantly increase the probability or consequences of accidents and would not result in a significant increase in the radiological environmental impact of ANO–2 under accident conditions. If the license amendment request is approved, the result of the staff's analyses will be presented in the safety evaluation issued with the license amendment.

Severe Accidents

The environmental effects of severe accidents outside the design basis of protection and engineered safety systems were not evaluated in the ANO–2 ER. The NRC staff finds that the EPU will not significantly increase the probability or consequences of accidents and will not result in a significant increase in the radiological environmental impact of ANO–2 under accident conditions.

Fuel Cycle and Transportation Impacts

The EPU will involve an increase in the average enrichment of the fuel bundle. The environmental impacts of the fuel cycle and of transportation of fuel and wastes are described in 10 CFR part 51, Tables S–3 and S–4, specifically at 10 CFR 51.51 and 10 CFR 51.52, respectively. ANO–2 FES Section 5.5.3 discusses the uranium fuel cycle and transportation impact of the fuel at original issuance of the operating license. An NRC assessment (53 FR 30355, dated August 11, 1988, as corrected by 53 FR 32322, dated August 24, 1988) evaluated the applicability of Tables S–3 and S–4 to higher burnup cycles. The assessment concluded that there is no significant change in environmental impacts for fuel cycles with uranium enrichments up to 5.0 weight-percent U–235 and burnups up to 60 gigawatt-days per metric ton of uranium (GWd/MTU) from the parameters evaluated in Tables S–3 and S–4. In Operating License Amendment 178 dated January 14, 1997, the NRC granted Entergy's request to increase the fuel enrichment from 4.1 percent to 5.0 percent at ANO–2. The environmental effects of this fuel enrichment increase were considered at that time. Since the fuel enrichment for the EPU will not exceed 5.0 weight-percent U–235, and the rod average discharge exposure will not exceed 60 GWd/MTU, the environmental impacts of the proposed EPU will remain bounded by these conclusions and is not expected to be significant.

Summary

The NRC staff concludes that the proposed EPU will not significantly increase the probability or consequences of an accident, will not introduce any new radiological release pathways, will not result in a significant increase in occupational or public radiation exposures, and will not result in significant additional fuel cycle environmental impacts. Accordingly,

the NRC staff concludes that no significant radiological environmental impacts are associated with the proposed action. Table 2 summarizes the radiological environmental impacts of the EPU.

TABLE 2.—SUMMARY OF RADIOLOGICAL ENVIRONMENTAL IMPACTS OF POWER UPRATE

Surface Water	No change in radiological impact to surface water.
Groundwater	No change in radiological impact to ground water.
Radiological Waste Stream Impacts	No changes in design or operation of waste streams.
Gaseous Radioactive Waste Impacts	An increase in release rate that is linearly proportional to the power increase will be expected.
Liquid Radioactive Waste Impacts	No change in ANO–2 liquid release policy.
Solid Radioactive Waste Impacts:	
Wet Waste	No appreciable change in radioactive secondary resins expected due to EPU.
Dry Waste	No significant changes in dry waste foreseen.
Irradiated Reactor Components	No significant changes in irradiated components foreseen.
Dose Impacts:	
In-plant Radiation	Even though some elevated RCS activity levels, in-plant exposures are controlled to mitigate worker exposures.
Offsite Doses	Slight increase in gaseous activity levels possible, but doses will remain ALARA and within 10 CFR Part 20 limits.
Accident Analysis Impacts	No increase in the probability of an accident. Some increase in consequences of an accident but still within NRC acceptance limits.
Fuel Cycle and Transportation Impacts	Increase in bundle average enrichment; impacts will remain within the conclusions of Table S–3 and Table S–4 of 10 CFR Part 51.

Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (*i.e.,* the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

The estimated cost of the increase in generating capacity is approximately half the cost projected for purchasing the power and one-third the cost of producing the power by constructing a new combined-cycle, natural-gas-fueled facility with the attendant environmental impacts of construction and operation. The licensee concluded that increasing ANO–2 capacity would be an economical and environmentally sound option for increasing power supply. Furthermore, unlike fossil fuel plants, ANO–2 does not routinely emit sulfur oxides, nitrogen oxides, particulate, matter carbon dioxide, or other atmospheric pollutants that contribute to greenhouse gases or acid rain.

Alternative Use of Resources

This action does not involve the use of any resources different than those previously considered in the FES for ANO–2, dated June 1977 (NUREG–0254).

Agencies and Persons Consulted

In accordance with its stated policy, on March 1, 2002, the NRC staff consulted with Division of Radiation Control and Emergency Management of the Arkansas Department of Health, regarding the environmental impact of the proposed action. The State official had no comment.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the following: The environmental impacts of ANO–2 have been described in (1) the FES, dated June 1977 (NUREG–0254), (2) the PULR, which is Enclosure 5 to the EPU application dated December 19, 2000, and (3) the June 26 and December 10, 2001, and January 15, 2002, RAI responses. On January 31, 2000, as supplemented by letters dated June 26, July 31, and September 21, 2000, Entergy submitted its ER supporting the license renewal of ANO–1. The staff Environmental Impact Statement has been issued as NUREG–1437, Supplement 3. Supplement 3 addresses many balance-of-plant site features that are common to ANO–1 and ANO–2. Supplement 3 was cited in Enclosure 5 of the December 19, 2000, license application in instances where site characteristics common to both ANO–1 and ANO–2 are unchanged by the EPU. Documents may be examined and/or copied for a fee at the NRC's Public Document Room, at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room Reference staff by telephone at 1–800–397–4209, or 301–415–2737, or by e-mail at *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 13th day of March 2002.

For the Nuclear Regulatory Commission.

Robert A. Gramm,

Chief, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–6535 Filed 3–18–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Public Workshop on New Reactor Licensing Activities

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public workshop.

SUMMARY: The Nuclear Regulatory Commission (NRC) has scheduled a public workshop to inform the public of preliminary staff positions presented in SECY–01–0207, ''Legal and Financial Issues Related to Exelon's Pebble Bed Modular Reactor (PBMR),'' dated November 20, 2001 (ML012850139), and to provide an opportunity for stakeholders, including members of the public, to provide feedback on these positions.

DATES: March 27, 2002, from 1 p.m.–5 p.m.

ADDRESSES: The workshop will be held in the NRC's Auditorium at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852–2738.

FOR FURTHER INFORMATION: Contact Amy Cubbage, Mail Stop O–11D17, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Members of the public may pre-register for this meeting by contacting Amy Cubbage at (800) 368–5642, ext. 2875, or by Internet at *aec@nrc.gov* by March 21, 2002.

The NRC maintains an Agencywide Documents Access and Management System (ADAMS) which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/Index.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

SUPPLEMENTARY INFORMATION: By letter dated December 5, 2000, Exelon Generation Company expressed an interest in pre-application activities for the pebble bed modular reactor (PBMR). The staff began its pre-application review at a meeting with Exelon on April 30, 2001. As part of the meeting, Exelon discussed legal and financial issues that they believe merit special consideration due to the unique features of the modular facility, the gas-cooled reactor design and their intention to operate the PBMR as a merchant plant. By letter dated May 10, 2001 (ML011420393), Exelon submitted nine white papers on these legal and financial issues and requested an agency response. The nine white papers addressed requirements associated with operator staffing; fuel cycle impacts; financial qualifications; decommissioning funding; minimum decommissioning costs; antitrust review; number of licenses; annual fees; and financial protection.

In addition to issues discussed in the white paper proposals, the staff identified the following related issues to Exelon's proposals that may affect the PBMR application: License life for one combined license for multiple reactors; duration of design approval under a combined license (COL) for multiple reactors; commencement of annual fees; and testing of new design features for a COL.

SECY–01–0207, ''Legal and Financial Issues Related to Exelon's Pebble Bed Modular Reactor (PBMR),'' dated November 20, 2001 (ML012850139), presents preliminary positions related to the staff's assessment of Exelon's proposals on legal and financial issues and additional staff-identified licensing-related issues that may affect the Exelon application. The staff committed to hold a workshop to apprise Exelon and other stakeholders on the positions presented in the paper and receive their feedback. Based on this feedback, the staff will amend its positions, as necessary, and make recommendations on policy issues related to the legal and financial issues for Commission approval later this year.

For each of the issues discussed above, the NRC staff will provide a brief summary of the issue. This will be followed by an open discussion and opportunity for all stakeholders, including members of the public, to provide feedback on the preliminary staff positions presented in SECY–01–0207. Comments on SECY–01–0207 may also be submitted in writing by April 10, 2002. Comments should be addressed to Amy Cubbage, U. S. Nuclear Regulatory Commission, Mail Stop O–11–D–17, Washington, DC 20555–0001.

A final agenda and schedule will be published on the NRC Web site when it is available: *http://www.nrc.gov/public-involve/public-meetings/meeting-schedule.html.*

Dated at Rockville, Maryland, this 12th day of March 2002.

For the Nuclear Regulatory Commission.

James E. Lyons,

Director, New Reactor Licensing Project Office, Office of Nuclear Reactor Regulation.

[FR Doc. 02–6494 Filed 3–18–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

Agency Holding the Meeting: Nuclear Regulatory Commission.

Date: Weeks of March 18, 25, April 1, 8, 15, 22, 2002.

Place: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

Status: Public and closed.

Matters To Be Considered

Week of March 18, 2002

Tuesday, March 19, 2002

9:30 a.m.—Briefing on Office of Nuclear Regulatory Research (RES) Programs, Performance, and Plans (Public Meeting) (Contact: James Johnson, 301–415–6802).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Wednesday, March 20, 2002

9:25 a.m.—Affirmation Session (Public Meeting), (If needed).

9:30 a.m.—Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting) (Contact: John Larkins, 301–415–7360).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Week of March 25, 2002—Tentative

Monday March 25, 2002

1:00 p.m.—Discussion of Intergovernmental Issues (Closed).

Week of April 1, 2002—Tentative

There are no meetings scheduled for the Week of April 1, 2002.

Week of April 8, 2002—Tentative

Friday, April 12, 2002

9:25 a.m.—Affirmation Session (Public Meeting), (If needed).

Week of April 15, 2002—Tentative

There are no meetings scheduled for the Week of April 15, 2002.

Week of April 22, 2002—Tentative

There are no meetings scheduled for the Week of April 22, 2002.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

* * * * *

Additional Information

By a vote of 5–0 on March 7, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Affirmation of a) Duke Cogema Stone & Webster (Savannah River Mixed Oxide Fuel Fabrication Facility); Georgians Against Nuclear Energy's Petition for Interlocutory Review and Request for Stay Pending Review and b) Private Fuel Storage (Independent Spent Fuel Storage Installation) Docket No. 72–22–ISFSI; Review of LBP–02–08 (February 22, 2002)'' be held on March 7, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/what-we-do/policy-making/schedule.html.*

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This notice is distributed by mail to several hundred subscribers; if you no

longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: March 14, 2002.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 02–6655 Filed 3–15–02; 10:48 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from February 22, 2002 through March 7, 2002. The last biweekly notice was published on March 5, 2002 (67 FR 10006).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By April 18, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the

bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 304–415–4737 or by e-mail to *pdr@nrc.gov*.

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of amendment request: December 19, 2001.

Description of amendment request: The proposed amendment provides clarifications and substantive changes to the decay heat removal (DHR) Technical Specifications (TSs). It is intended, in part, to fulfill a commitment made by the licensee to the NRC during a pre-decisional enforcement conference on April 23, 1999. Specifically, the proposed changes would: (1) define and clarify the emergency feedwater (EFW) flowpath redundancy as described in the Bases; (2) provide operability requirements for the redundant steam supply paths to the turbine-driven EFW pump; (3) provide a 72-hour allowed outage time (AOT) with any EFW pump or flowpath inoperable; (4) provide a 24-hour AOT with one steam supply path to the turbine-driven EFW pump and one motor-driven EFW pump inoperable; (5) provide a requirement to initiate action to immediately restore at least 2 EFW pumps and one flowpath to each once-through steam generator (OTSG) if more than one EFW pump or both flowpaths to either OTSG were inoperable; (6) provide a statement suspending actions requiring shutdown or changes in reactor operating conditions until at least 2 EFW pumps and one EFW flowpath to each OTSG are restored to operable status; and (7) revise, relocate and clarify EFW pump and flowpath operability requirements during surveillance testing. Minor administrative and editorial changes are also proposed, including relocation of some requirements for clarity. A note is added to TS 4.9.1.1 and its related Bases to indicate that the surveillance is not applicable to the turbine driven EFW pump until 24 hours after exceeding 750 psig. A change to TS Table 3.5–2 and the Bases for TS 3.5.5, ''Accident Monitoring Instrumentation,'' regarding the description of the pressurizer level instrument channels to reflect the replacement of Bailey transmitters was also included. Unrelated editorial changes to the Table of Contents were also included.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will the operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. This change incorporates the concept of EFW flowpath redundancy throughout the TS[s], which takes into consideration the redundancy provided by the EFW System modifications made in the mid-1980s after the accident at TMI–2 [Three Mile Island Nuclear Station, Unit 2]. This change incorporates appropriate Limiting Conditions of [for] Operation (LCOs) and required action times and clarifies the design basis of the EFW System technical specification requirements in the LCOs and Surveillance Standards. These changes will not result in any change to the configuration of the EFW System as described in the SAR [Safety Analysis Report] or used in plant specific analyses. The reliability of EFW System components is unaffected. With less than the minimum EFW capability, this change incorporates the STS [standard technical specification] requirement to initiate action immediately to restore EFW components and suspend all actions requiring shutdown or changes in reactor operating conditions. The seriousness of this condition requires that action be started immediately to restore EFW components to operable status prior to power reductions that could result in a plant trip with no safety related means for conducting a cooldown. This change will not significantly affect any accident initiation sequence or the off site dose consequences of accidents that have been analyzed.

The current surveillance standard contains EFW flowpath operability requirements being moved to the Limiting Conditions of [for] Operation (LCO) section in Chapter 3 and combined with the notes to define the EFW System operability requirements for EFW pumps and flowpaths during surveillance testing. The revised specification incorporates consideration of EFW flowpath redundancy consistent with HSPS [heat sink

protection system] train operability requirements and continues to require that compensatory measures be implemented to promptly restore components if EFW is needed during surveillance testing when more than one pump or both flowpath[s] to an OTSG are inoperable. The intent of this surveillance standard has been retained, which assures that the minimum number of EFW flowpaths to the OTSGs will be available with minimal operator action. The addition of a note, currently provided in the Standard Technical Specifications which permits a delay in performing the surveillance of the turbine-driven EFW Pump is needed to assure sufficient main steam pressure is available for performance of the test and does not significantly affect the reliability of the pump or the consequences of accidents previously evaluated.

This change provides further assurance that EFW System design basis requirements will be met and does not affect EFW system configuration, setpoints, or reliability. These changes will not affect any accident initiation sequence and do not affect off site dose consequences of accidents that have been analyzed. The revised Accident Monitoring Instrumentation specification for the EFW flow instruments is needed to reflect the revised flowpath definition and does not change the intent or interpretation of this specification. The editorial changes included in this LCA [license change application] are intended to improve the clarity, consistency and readability of the TS[s], [and] do not change the intent or interpretation.

Therefore, operation of the facility in accordance with this proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. As a result of this change, no additional hardware is being added; and there will be no affect on EFW System design, operation as described in the SAR, or assumptions used in plant specific analyses. The requirement for three EFW Pumps and [associated] flowpaths to be operable for continuous plant operation is not affected by this change. Events involving the EFW System operation have been reviewed and determined to have no impact from these changes. The additional operability requirements, revised LCOs and surveillance standards, clarifications and changes to define EFW flowpath redundancy ensures minimum EFW component operability as credited in plant analyses. There are no changes included that could affect the plant beyond those accidents that have been evaluated. The editorial changes included in this LCA are intended to improve the clarity, consistency, and readability of the TS[s] and Bases, [and] do not change the intent or interpretation.

Therefore, operation of the facility in accordance with this proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

No. This change does not affect EFW System design or instrumentation setpoints. The requirement for three operable EFW pumps and associated flowpaths is not affected by this change. This change revises the Limiting Conditions of [for] Operation (LCOs) for the EFW System, revises the required actions, impose[s] additional required action times, and provide[s] clarification of the LCO and Surveillance Standards. The revised LCO requires that at least one flowpath to each OTSG must be operable. The 8 hour action time currently allowed for pump inoperability during surveillance testing is also applied to flowpath inoperability during testing. The revised LCO continues to require compensatory measures during EFW testing when HSPS is required to be operable and an OTSG is isolated, retaining the provision that EFW flowpath valves can be realigned promptly from their test mode to their operational alignment if EFW flow is needed. None of these changes affect a margin of safety. The revised Accident Monitoring Instrumentation specification for the EFW flow instruments is needed to reflect the revised flowpath definition and does not change the intent or interpretation of this specification. The editorial changes included in this LCA are intended to improve the clarity, consistency, and readability of the TS[s], [and] do not change the intent or interpretation.

Therefore, operation of the facility in accordance with this proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Edward J. Cullen, Jr., Esquire, Vice President, General Counsel and Secretary, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: Joel T. Munday, Acting.

Calvert Cliffs Nuclear Power Plant, Inc., Docket No. 50–318, Calvert Cliffs Nuclear Power Plant, Unit No. 2, Calvert County, Maryland

Date of amendment request: November 19, 2001.

Description of amendment request: The amendment would revise the Technical Specification 5.5.16 to eliminate the requirement to perform post-modification containment integrated leakage rate testing following replacement of Unit 2 steam generators.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The steam generator replacement activities do not affect the containment structure or the actual containment liner. Access for the replacement steam generators as well as removal of the old steam generators will be through the equipment hatch. However, the outer shell of the steam generators, the inside containment portions of the main steam line, the feedwater lines, the auxiliary feedwater lines, and the steam generator blowdown lines are all part of the primary reactor containment boundary that will be impacted by the replacement activities.

Calvert Cliffs Nuclear Power Plant Technical Specification 5.5.16 states, ''A program shall be established to implement the leakage testing of the containment as required by 10 CFR 50.54(o) and 10 CFR Part 50, Appendix J, Option B. This program shall be in accordance with the guidelines contained in Regulatory Guide 1.163, ''Performance-Based Containment Leak-Test Program,'' dated September 1995, including errata.'' Regulatory Guide 1.163, ''Performance-Based Containment Leak-Test Program,'' endorses Nuclear Energy Institute (NEI)94–01, Revision 0 for methods acceptable to comply with the requirements of Option B. Prior to returning the Containment to operation, NEI 94–01 requires leakage rate testing (Type A testing or local leakage rate testing), following repairs and modification that affect the containment leakage integrity.

The affected area of the primary containment boundary is also part of the pressure boundary of an American Society of Mechanical Engineers (ASME) Class 2 component/piping system and, as such, the planned replacement of the steam generators are subject to the repair and replacement requirements of ASME Section XI. The ASME Section XI surface examination, volumetric examination, and system pressure test requirements are more stringent than the Appendix J, Option B testing requirements. The acceptance criteria for ASME Section XI system pressure testing of welded joints in ''zero leakage.'' In addition, the test pressure for the system pressure test will be approximately 17 times that of Appendix J, Option B test.

The objective of the Type A test is to assure the leak-tight integrity of the area affected by the modification. Although the leak test is in a direction reverse to that of the design basis accident environment, the ASME Section XI inspection and testing requirements more than fulfill the intent of the requirements of Appendix J, Option B with the exception of secondary side access manways. Section 9.2.1, NEI 94–01, Revision 0 allows reverse testing if justified. Section XI pressure test applies a sealing pressure to the secondary manway due to the inward door swing configuration. Hence, a Type B local leak rate test will be performed for the secondary

manways. For all other affected components, reverse testing is justified since the acceptance criteria for ASME Section XI system pressure testing of welded joints is ''zero leakage,'' and the test pressure for the system pressure test will be approximately 17 times that of Type A test. Hence, the probability or consequences of design basis accidents previously evaluated are unchanged.

Therefore, the proposed revision to Technical Specification 5.5.16 to eliminate the requirement to perform post-modification containment integrated leakage rate testing following replacement of Unit 2 steam generators will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different [kind] of accident from any accident previously evaluated.

The proposed revision does not involve a physical change to the plant and there are no changes to the operation of the plant that could introduce a new failure mode. As described above in Item 1, the objective of the Appendix J, Option B test is to assure the leak-tight integrity of the area affected by the modification. The ASME Section XI inspection and testing requirements are more stringent than the Appendix J, Option B testing requirements.

Therefore, the proposed revision to Technical Specification 5.5.16 to eliminate the requirement to perform post-modification containment leakage integrated rate testing following replacement of Unit 2 steam generators will not create the possibility of a new or different [kind] of accident from any accident previously evaluated.

3. Would not involve a significant reduction in [a] margin of safety.

As described above in Item 1, the ASME Section XI surface examination, volumetric examination, and system pressure test requirements are more stringent than the Appendix J, Option B testing requirements. The acceptance criteria for ASME Section XI system pressure testing of welded joints is ''zero leakage.'' In addition, the test pressure for the system pressure test will be approximately 17 times that of Appendix J, Option B test.

Therefore, the proposed revision to Technical Specification 5.5.16 to eliminate the requirement to perform post-modification containment integrated leakage rate testing following replacement of Unit 2 steam generators does not involve a significant reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Joel Munday, Acting.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: January 31, 2002.

Description of amendments request: The proposed amendment would revise Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation (LCO), following a missed surveillance. The delay period would be extended from the current limit of ''... up to 24 hours or up to the limit of the specified Frequency, whichever is less'' to ''...up to 24 hours or up to the limit of the specified Frequency, whichever is greater.'' In addition, the following requirement would be added to SR 3.0.3: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.''

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC determination in its application dated January 31, 2002.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff

proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Joel Munday, Acting.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: December 20, 2001.

Description of amendment request: The amendments would revise the Technical Specification (TS) 3.3.2, Engineered Safety Feature Actuation System (ESFAS) Instrumentation, and TS 3.3.5, Loss of Power Diesel Generator Start Instrumentation for Catawba Nuclear Station, Units 1 and 2. These amendments would modify the subject TS as summarized below.

1. Add a new MODE 3 operability requirement within ESFAS Function 5 (Turbine Trip and Feedwater Isolation) as shown on TS Table 3.3.2–1; reformat TS Table 3.3.2–1 in regard to ESFAS Function 5; modify identified Conditions and Required Actions applicable within ESFAS Function 5; and modify the content and footnotes applicable to ESFAS Functions 5 and 6 (Auxiliary Feedwater).

2. Delete ESFAS Functions 5e (Dog House Water Level—High High) and 5f (Turbine Trip and Feedwater Isolation, Trip of all Main Feedwater Pumps).

3. Modify the Conditions and Required Actions for ESFAS Function 6d (Auxiliary Feedwater, Loss of Offsite Power).

4. Modify the Conditions and Required Actions for ESFAS Function 6e (Auxiliary Feedwater, Trip of all Main Feedwater Pumps).

5. Modify the Conditions and Required Actions for ESFAS Function 6f (Auxiliary Feedwater, Auxiliary Feedwater Pump Train A and Train B Suction Transfer on Suction Pressure—Low).

6. Make an editorial change to ESFAS Function 8 (ESFAS Interlocks, T_{avg}—Low Low, P–12).

7. Add a new TS Surveillance Requirement (SR 3.3.2.12) for ESFAS Function 10 (Nuclear Service Water Suction Transfer—Low Pit Level).

8. Add a note to Condition A of TS 3.3.5 which allows one channel per bus to be bypassed for surveillance testing.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The following discussion is a summary of the evaluation of the changes contained in this proposed amendment against the 10 CFR 50.92(c) requirements to demonstrate that all three standards are satisfied. A no significant hazards consideration is indicated if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated, or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated, or

3. Involve a significant reduction in a margin of safety.

First Standard

Implementation of this amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. Approval of this amendment will have no effect on accident probabilities or consequences. For the proposed changes to Technical Specifications (TS) 3.3.2, Engineered Safety Features Actuation System (ESFAS); and 3.3.5, Loss of Power Diesel Generator Start Instrumentation; the equipment referenced in these TS is not accident initiating equipment. Therefore, there will be no impact on any accident probabilities caused by the NRC approval of this amendment. Additionally, since the design of the equipment is not being adversely modified by these proposed changes, there will be no impact on any accident consequences.

Second Standard

Implementation of this amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. No new accident causal mechanisms are created as a result of the NRC approval of this license amendment request. No changes are being made to the plant which will introduce any new accident causal mechanisms. This amendment request does not impact any plant systems that are accident initiators; therefore, no new accident types are being created.

Third Standard

Implementation of this amendment would not involve a significant reduction in a margin of safety. Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of these fission product barriers will not be impacted by implementation of this proposed amendment. The equipment referenced in the proposed change to TS 3.3.2 and 3.3.5 will remain capable of performing as designed. No safety margins will be impacted.

Conclusion

Based upon the preceding discussion, Duke Energy Corporation has concluded that this proposed amendment does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: Richard J. Laufer, Acting.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: February 6, 2002.

Description of amendment request: The proposed amendment would remove the requirement for Main Steam Isolation Valve isolations on certain area temperatures from Technical Specifications Section 3.3.6.1, ''Primary Containment and Drywell Isolation Instrumentation.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

There is no credit taken in any licensing basis analysis for the main steam line isolation valve (MSIV) closure on the turbine area high temperature and there are no calculations that credit the subject isolation function as a mitigative feature. A review of Chapters 5, 6, 11, 12, and 15 of the USAR [Updated Safety Analysis Report] confirmed that the subject isolation function was not credited in any analysis for mitigating fuel cladding damage, mitigating challenges to vessel integrity, or mitigating dose to plant staff or the general public. This conclusion is consistent with the discussion of the function in the current Technical Specification [TS] Bases (B 3.3.6.1). Removing this requirement from the TS will allow the licensee to make changes to the design or function of the instrumentation provided the changes meet the 10 CFR 50.59 criteria. Entergy intends to make changes that will reduce unwarranted challenges to the MSIVs, associated isolation and actuation logic, and minimize the likelihood of an unwarranted plant transient due to increased ambient temperatures for reasons other than a steam leak. Therefore, the proposed change does not involve a

significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change removes the automatic MSIV isolation function associated with high temperatures in certain Turbine Building areas from the requirements of the Technical Specifications. Relocating requirements for this isolation function to licensee control does not introduce any new failure mechanisms or introduce any new accident precursors. Any subsequent changes to the design or function of the instrumentation must meet the criteria of 10 CFR 50.59.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

There is no credit taken in any licensing basis analysis for the main steam line isolation (MSIV closure) on the turbine area high temperature. Therefore, since the MSIV isolation function on the Turbine Building Area High Temperature is not credited as a mitigating feature in any analysis which establishes thermal limits, evaluates peak vessel pressure, evaluates peak containment/drywell pressure, or evaluates radiological consequences (on and off site), there is no adverse impact on any margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, Entergy concludes that the proposed amendment(s) present no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: January 31, 2002.

Description of amendment request: The proposed amendment would modify the Arkansas Nuclear One, Unit 2 (ANO–2) Facility Operating License (FOL) and Technical Specifications (TSs) to reorganize the Administrative Controls section (Section 6.0) to be consistent with NUREG–1432, ''Standard Technical Specifications Combustion Engineering Plants'' and provide consistency with the Arkansas Nuclear One, Unit 1 (ANO–1) TS Section 6.0. This change would result in moving several surveillance requirements, currently contained in the Surveillance Requirements section of the ANO–2 TSs, and programs contained in the FOL, to Section 6.0. The change would also result in the deletion of several TSs currently contained in Section 6.0. A Bases Control Program would also be added to Section 6.0. The TS actions related to the Control Room Ventilation System would also be modified as part of the proposed amendment. The ventilation system (emergency and air conditioning system) for the control room is shared with ANO–1 and, thus, the TSs for this system are maintained consistent between the units where appropriate.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change modifies the Administrative Controls section of the ANO–2 TSs to be consistent with NUREG–1432. [The requirements of] 10 CFR 50.36, ''Technical Specifications'' defines the Administrative Controls section as follows: ''Administrative controls are the provisions relating to organization and management, procedures, recordkeeping, review and audit, and reporting necessary to assure operation of the facility in a safe manner.'' Therefore, by definition the specifications contained in the Administrative Controls section are not specifications related to systems that are used to mitigate any types of accidents. The proposed changes to the Administrative Controls section therefore do not impact the ability of a plant system to perform its intended function.

The proposed changes to the Control Room Ventilation System specifications do not result in any type of plant modification to this system. The system's intended function is to provide heating, ventilation, and air conditioning to ensure a suitable environment for equipment and station operator comfort and safety.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change will re-organize the ANO–2 Administrative Controls section and modify the actions related to the Control Room Ventilation System. The changes to the Administrative Controls section by definition of the type of specifications, which are included in the Administrative Controls section, will not create any new or different types of accidents.

The modifications to the Control Room Ventilation System specifications result in providing clarity to existing actions and the addition of new actions. The addition of the new actions results in consistency between the ANO–1 and ANO–2 TSs. No design changes are proposed to the Control Room Ventilation System.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes result in the relocation of several surveillance requirements to the Administrative Controls section as well as the re-organization of the Administrative Controls Section of the ANO–2 TSs. In addition, clarification is added to the Control Room Ventilation System action statements that result in consistency between the ANO–1 and ANO–2 TSs. These changes do not affect the margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: February 20, 2002.

Description of amendment request: The proposed amendment would revise Section 3.6.5 of the St. Lucie Unit 1 and 2 Technical Specifications (TS) to extend the allowed outage time for the Containment vacuum relief lines from 4 hours to 72 hours, in order to facilitate compliance with the Inservice Testing Program without placing the plants at risk for unnecessary shutdowns. The extended allowed outage time would provide sufficient time to perform the required surveillance tests and make any required adjustments on the

Containment vacuum relief valves. The proposed changes are consistent with NUREG–1432, ''Standard Technical Specifications for Combustion Engineering Plants.'' *Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not create any new system interactions and have no impact on operation or function of any system or equipment in a way that could cause an accident. The primary containment to annulus vacuum relief valves are part of the containment vacuum relief system and are not initiators of any events nor affect any accident initiators of any events previously analyzed in Chapters 6 or 15 of the UFSAR [Updated Final Safety Analysis Report].

The primary containment to annulus vacuum relief valves are designed to mitigate the consequences of an inadvertent containment spray system actuation during normal plant operation. The UFSAR analysis determined that with one of the two containment vacuum lines failed, the resultant peak calculated external pressure load on the containment was less than the design external pressure loading of 0.7 psi. These proposed changes do not affect any of the assumptions used in the analysis. Hence, the consequences of the design basis accident previously evaluated do not change.

Therefore, these changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes do not alter the design, configuration, or method of operation of the plant. There is no change being made to the parameters within which the plant is operated. The setpoints at which the protective or mitigating actions are initiated are unaffected by this change. As such, no new failure modes are being introduced that would involve any potential initiating events that would create any new or different kind of accident.

Therefore, these changes do not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The proposed changes do not affect the bases used in or the results of the analysis to establish the margin of safety. The margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. None of these are impacted by the proposed change. The proposed change is acceptable because it assures at least one vacuum relief line will remain available in the event of a single failure. This further assures the ability to actuate upon demand for the purpose of mitigating the consequences of the design basis accident (inadvertent actuation of the containment spray system during normal operation). The remaining vacuum relief line provides sufficient vacuum relief capacity to prevent exceeding the design external pressure loading on containment of 0.7 psi.

Therefore, these changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Richard P. Correia.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of amendment requests: February 22, 2002.

Description of amendment requests: The proposed amendments would relocate technical specifications (TSs) 3/4.9.6, ''Refueling Operations—Manipulator Crane Operability'' and TSs 3/4.9.7, ''Refueling Operations—Crane Travel—Spent Fuel Storage Pool Building,'' with associated Bases to the D. C. Cook updated final safety analysis report (UFSAR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

Response: No.

The proposed changes are administrative in nature in that they result in relocation of requirements from TS 3/4.9.6 and 3/4.9.7, with associated Bases, to the CNP UFSAR. Changes to the UFSAR are controlled by 10 CFR 50.59. Regulation 10 CFR 50.59 requires that NRC approval be obtained prior to any change to the UFSAR that would result in more than a minimal increase in the frequency of occurrence of an accident previously evaluated. Accordingly, the relocation of requirements from TS 3/4.9.6 and 3/4.9.7, with associated Bases to the CNP UFSAR provides continued protection from changes involving unapproved increases in the probability of occurrence of an accident. The relocation of the requirements of TS 3/4.9.6 and 3/4.9.7 would not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, configuration of CNP or the manner in which it is operated. Therefore, the proposed change does not significantly increase the probability of occurrence of an accident previously evaluated.

The proposed change to relocate TS 3/4.9.6 and 3/4.9.7, with associated Bases to the CNP UFSAR does not impact the consequences of an accident because there is no effect on the structures, systems and components that mitigate the effects of an accident, or the manner in which they are operated. In accordance with 10 CFR 50.59, if any proposed change to the UFSAR results in more than a minimal increase in the consequences of an accident previously evaluated, NRC review and approval is required prior to the change being made. Accordingly, the relocation of requirements from TS 3/4.9.6 and 3/4.9.7, with associated Bases to the CNP UFSAR provides continued protection from changes involving unapproved increases in the probability of in the consequences of an accident. Therefore, the relocation of requirements will not affect offsite doses, and the consequences of an accident previously evaluated are not significantly increased.

The format changes improve the appearance of the affected pages but do not affect any requirements.

Therefore, the probability of occurrence and the consequences of an accident previously evaluated are not significantly increased.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to relocate TS 3/4.9.6 and 3/4.9.7, with associated Bases, to the CNP UFSAR does not create new accident causal mechanisms. Plant operation will not be affected by the proposed change and no new failure modes will be created. Regulation 10 CFR 50.59 requires that NRC approval be obtained prior to any change to the UFSAR that would create the possibility of a new or different kind of accident from any accident previously evaluated. Accordingly, the relocation of requirements from TS 3/4.9.6 and 3/4.9.7, with associated Bases to the CNP UFSAR provides continued protection from unapproved changes involving new or different kinds of accidents.

The format changes improve the appearance of the affected pages but do not affect any requirements.

Therefore, the possibility of a new or different kind of accident from any previously evaluated is not created.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change to relocate the requirements from the TS to the UFSAR does not impact equipment design or operation and no changes are being made to the TS

required safety limits, safety system settings, or any safety margins associated with TS 3/4.9.6 and 3/4.9.7. Changes to the UFSAR are controlled under the 10 CFR 50.59 process, which requires a safety evaluation to be performed. If any proposed change to the UFSAR results in a design basis limit for a fission product barrier, as described in the UFSAR, being exceeded or altered or results in a departure from a method of evaluation described in the UFSAR used in establishing the design bases or in the safety analyses, NRC review and approval will be required prior to the change being made. Accordingly, the relocation of requirements from TS 3/4.9.6 and 3/4.9.7, with associated Bases to the CNP UFSAR provides continued protection from changes involving a reduction in the margin of safety. The format changes improve the appearance of the affected pages but do not affect any requirements.

Therefore, there is no significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107.

NRC Section Chief: William D. Reckley, Acting Section Chief.

Maine Yankee Atomic Power Company, Docket No. 50–309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of amendment request: August 16, 2001.

Description of amendment request: The proposed amendment would terminate license jurisdiction for a portion of the Maine Yankee Atomic Power Station (Maine Yankee) site, thereby releasing these lands from Facility Operating License No. DPR–36. In part, the release of these lands will facilitate the donation of a portion of this property to an environmental organization pursuant to a Federal Energy Regulatory Commission approved settlement between Maine Yankee Atomic Power Company and its ratepayers. The lands donated will be used to create a nature preserve and an environmental education center.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The requested license amendment involves release of land presently considered part of the Maine Yankee plant site under license DPR–36. The land in question is not used for any licensed activities. No radiological materials have historically been used on this land and the land will not be used to support ongoing decommissioning operations and activities.

Most of the land to be released is outside the Exclusion Area Boundary and therefore is not affected by the consequences of any postulated accident. A small portion of the land is within the Exclusion Area Boundary. Maine Yankee will retain sufficient control over activities performed within this land through rights granted in the legal land conveyance documents to ensure that there is no impact on consequences from postulated accidents. Therefore, the release of the land from the [10 CFR] Part 50 license will not increase the probability or the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The requested amendment involves release of land presently considered part of the Maine Yankee plant site under license DPR–36. The land is not used for any licensed activities or decommissioning operations. The proposed action does not affect plant systems, structures or components in any way. The requested release of the land does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The margin of safety defined in the statements of consideration for the final rule on the Radiological Criteria for License Termination is described as the margin between the 100 mrem/yr public dose limit established in 10 CFR 20.1301 for licensed operation and the 25 mrem/yr dose limit to the average member of the critical group at a site considered acceptable for unrestricted use. This margin of safety accounts for the potential effect of multiple sources of radiation exposure to the critical group. Additionally, the State of Maine, through legislation, has imposed a 10 mrem/yr all pathways limit, with no more than 4 mrem/yr attributable to drinking water sources. Since the area is non-impacted, there will be no additional dose to the average member of the critical group. Furthermore, the survey results described in Attachment III [of the August 16, 2001, application] demonstrate that residual radioactivity, if any, in the area is indistinguishable from background. Therefore, this proposed license change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendment involves no significant hazards consideration.

Attorney for licensee: Joe Fay, Esquire, Maine Yankee Atomic Power Company, 321 Old Ferry Road, Wiscasset, Maine 04578.

NRC Section Chief: Robert A. Gramm.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: February 21, 2002.

Description of amendment request: The proposed amendment would relocate specific pressure, differential pressure, and flow values, as well as specific test methods, associated with certain Engineered Safeguards Features (ESF) pumps from the Technical Specifications to the Seabrook Station Technical Requirements Manual.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to relocate the specific ESF pump pressure and flow criteria in the aforementioned Technical Specifications surveillance requirements to the Seabrook Station Technical Requirements Manual are administrative in nature and do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, configuration of the facility or the manner in which it is operated. The proposed changes do not alter or prevent the ability or structures, systems, or components to perform their intended function to mitigate the consequences of an initiating event within the acceptance limits assumed in the Seabrook Station Updated Final Safety Analysis Report (UFSAR).

The subject surveillance requirement criteria relocated to the Seabrook Station Technical Requirements Manual will continue to be administratively controlled. The Seabrook Station Technical Requirements is a licensee-controlled document, which contains certain technical requirements and is the implementing manual for the Technical Specification Improvement Program. Changes to these requirements are reviewed and approved in accordance with Seabrook Station Technical Specifications, Section 6.7.1.i, and as outlined in the Seabrook Station Technical Requirements Manual.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not alter the design assumptions, conditions, or configuration of the facility or the manner in which the plant is operated. There are no changes to the source term or radiological release assumptions used in evaluating the radiological consequences in the Seabrook Station UFSAR. The proposed changes have no adverse impact on component or system interactions. The proposed changes will not adversely degrade the ability of systems, structures and components important to safety to perform their safety function nor change the response of any system, structure or component important to safety as described in the UFSAR. The proposed changes are administrative in nature and do not change the level of programmatic and procedural details of assuring operation of the facility in a safe manner. Since there are no changes to the design assumptions, conditions, configuration of the facility, or the manner in which the plant is operated and surveilled, the proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety.

There is no adverse impact on equipment design or operation and there are no changes being made to the Technical Specification required safety limits or safety system settings that would adversely affect plant safety. The proposed changes are administrative in nature and do not reduce the level of programmatic or procedural controls associated with the activities presently performed via the aforementioned surveillance requirements.

Future changes to the subject technical requirements will be reviewed and approved in accordance with Seabrook Station Technical Specifications, Section 6.7, and as outlined in North Atlantic [Energy Service Corporation]'s programs. Specifically, changes to the Seabrook Station Technical Requirements Manual require an evaluation pursuant to the provisions of 10 CFR 50.59 and review and approval by the Station Operation Review Committee (SORC) prior to implementation.

Therefore, relocation of the specific pump pressure and flow criteria contained in the aforementioned Technical Specifications Surveillance Requirements to the Seabrook Station Technical Requirements Manual does not involve a significant reduction in the margin of safety provided in the existing specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William J. Quinlan, Esq., Assistant General Counsel, Northeast Utilities Service Company, PO Box 270, Hartford CT 06141–0270.

NRC Section Chief: James W. Clifford.

Nuclear Management Company, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: January 11, 2002.

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 3.6.4, ''Containment Pressure,'' to reduce the maximum allowable pressure from 3 pounds per square inch gauge (psig) to 2 psig. The licensee requests these proposed amendments to address a non-conservatism that was identified during reviews of the Point Beach, Units 1 and 2, accident analyses.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant increase in the probability or consequences of any accident previously evaluated.

The operability of containment ensures that radionuclides are contained within allowable limits during and following all credible accident conditions. The inoperability or failure of containment is not a design basis accident initiator or precursor. Therefore, the probability of an accident previously evaluated will not be significantly increased as a result of the proposed change. Because design limitations continue to be met and the integrity of the containment system pressure boundary is not challenged, the assumptions employed in the calculation of the offsite radiological doses remain valid. In addition, the radiological consequence analysis for the main steam line break (MSLB) is performed assuming the MSLB is outside of the containment. Therefore, the operability of the containment structure does not affect the results of the offsite dose or control room dose consequences.

Therefore, the consequences of an accident previously evaluated will not be significantly increased as a result of the proposed change.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a new or different kind of accident from any accident previously evaluated.

The possibility for a new or different type of accident from any accident previously evaluated is not created as a result of this amendment. The evaluation of the effects of the proposed changes indicate that all design standards and applicable safety criteria limits are met. These changes, therefore, do not cause the initiation of any new or different accident nor create any new failure mechanisms.

Equipment important to safety will continue to operate as designed. Component integrity is not challenged. The changes do not result in any event previously deemed incredible being made credible. The changes do not result in more adverse conditions or result in any increase in the challenges to safety systems. Therefore, operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant reduction in a margin of safety.

The containment functions to mitigate the effects of accidents. There are no new or significant changes to the initial conditions contributing to accident severity or consequences. The proposed modification will not otherwise affect the plant protective boundaries, will not cause a release of fission products to the public, nor will it degrade the performance of any other SSCs [structures, systems, and components] important to safety. Reducing the maximum allowed containment pressure limit is conservative in that it reduces the peak containment pressure that could result in the event of an accident. Therefore, reducing the maximum allowed containment pressure limit will not reduce the margin of safety. The added conservatism provides improvement to the design pressure margin resulting from the proposed change and will enhance protection against conditions resulting from a design basis accident, which will therefore provide a net benefit to radiological health and reactor safety.

Conclusion

Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not result in a significant increase in the probability or consequences of any accident previously analyzed; will not result in a new or different kind of accident from any accident previously analyzed; and, does not result in a significant reduction in any margin of safety. Therefore, operation of PBNP [Point Beach Nuclear Plant] in accordance with the proposed amendments does not result in a significant hazards determination.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John H. O'Neill, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: William Reckley, Acting.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment requests: February 13, 2002.

Description of amendment requests: The proposed amendments would revise Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period would be extended from the current limit of ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less'' to ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater.'' In addition, the following requirement would be added to SR 3.0.3: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.''

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC determination in its application dated February 13, 2002.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Section Chief: Stephen Dembek.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment requests: February 22, 2002.

Description of amendment requests: The proposed amendment would revise technical specifications (TSs) for San Onofre Nuclear Generating Station (SONGS), Units 2 and 3 relating to spent fuel storage. Specifically, TS 3.7.17, ''Fuel Storage Pool Boron Concentration'', TS 3.7.18, ''Spent Fuel Assembly Storage'', and TS 4.3, ''Fuel Storage'' would be revised to remove credit for use of Boraflex, and to take credit for soluble boron, and to increase the required concentration of soluble boron in the spent fuel storage pool. Additionally, new TS 5.5.2.16, ''Fuel Storage Program'' would be added to create a TS to control the Fuel Storage Program.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No.

Dropped Fuel Assembly

There is no significant increase in the probability of a fuel assembly drop accident in the spent fuel pool when assuming a complete loss of the Boraflex panels in the spent fuel pool racks and considering the presence of soluble boron in the spent fuel pool water for criticality control.

The presence of soluble boron in the spent fuel pool water for criticality control does not increase the probability of a fuel assembly drop accident. The handling of the fuel assemblies in the spent fuel pool has always been performed in borated water, and the quantity of Boraflex remaining in the racks has no affect on the probability of such a drop accident.

Southern California Edison (SCE) has performed a criticality analysis which shows that the consequences of a fuel assembly drop accident in the spent fuel pool are not affected when considering a complete loss of the Boraflex in the spent fuel racks and the presence of soluble boron. The rack K_{eff} remains less than or equal to 0.95.

Fuel Misloading

There is no significant increase in the probability of the accidental misloading of spent fuel assemblies into the spent fuel racks when assuming a complete loss of the Boraflex panels and considering the presence

of soluble boron in the pool water for criticality control. Fuel assembly placement will continue to be controlled pursuant to approved fuel handling procedures and will be in accordance with the Technical Specification Section 5.5.2.16, ''Fuel Storage Program,'' which will specify spent fuel rack storage configuration limitations.

There is no increase in the consequences of the accidental misloading of a spent fuel assembly into the spent fuel racks. The criticality analysis, performed by SCE, demonstrates that the pool K_{eff} will be maintained less than or equal to 0.95 following an accidental misloading by the boron concentration of the pool. The proposed Technical Specification 3.7.17 will ensure that an adequate spent fuel pool boron concentration is maintained.

Significant Change in Spent Fuel Pool Temperature

There is no significant increase in the probability of either the loss of normal cooling to the spent fuel pool water or a decrease in pool water temperature from a large emergency makeup when assuming a complete loss of the Boraflex panels and considering the presence of soluble boron in the spent fuel pool water. A high concentration [> 2000 parts per million (ppm)] of soluble boron has always been maintained in the spent fuel pool water. The proposed minimum boron concentration of 2000 ppm in Technical Specification 3.7.17 will ensure that an adequate spent fuel pool concentration is maintained in the spent fuel pools.

A loss of normal cooling to the spent fuel pool water causes an increase in the temperature of the water passing through the stored fuel assemblies. This causes a decrease in water density, and when coupled with the assumption of a complete loss of Boraflex, may result in a positive reactivity addition. However, the additional negative reactivity provided by the boron concentration limit in the proposed Technical Specification 3.7.17 will compensate for the increased reactivity which could result from a loss of spent fuel pool cooling. Because adequate soluble boron will be maintained in the spent fuel pool water to maintain K_{eff} less than or equal to 0.95, the consequences of a loss of normal cooling to the spent fuel pool will not be increased.

A decrease in pool water temperature causes an increase in water density and may result in an increase in reactivity when the Boraflex panels are present in the racks. However, the additional negative reactivity provided by the boron concentration limit in the proposed Technical Specification 3.7.17, determined based on the conservative assumption of a complete loss of the Boraflex, will compensate for the increased reactivity which could result from a decrease in pool water temperature.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No.

Criticality accidents in the spent fuel pool are not new or different. They have been analyzed in the Updated Final Safety Analysis Report (UFSAR) and in previous submittals to the Nuclear Regulatory Commission (NRC). Specific accidents considered and evaluated include fuel assembly drop, fuel assembly misloading in the racks, and spent fuel pool water temperature changes.

The possibility for creating a new or different kind of accident is not credible. Neither Boraflex or soluble boron are accident initiators. The proposed change takes credit for soluble boron in the spent fuel pool while maintaining the necessary margin of safety. Because soluble boron has always been present in the spent fuel pool, a dilution of the spent fuel pool soluble boron has always been a possibility. However, this accident was not considered credible. For this proposed amendment, SCE performed a spent fuel pool dilution analysis, which demonstrated that a dilution of the boron concentration in the spent fuel pool water which could increase the rack K_{eff} to greater than 0.95 (constituting a reduction of the required margin to criticality) is not a credible event. The requirement to maintain boron concentration in the spent fuel pool water for reactivity control will have no effect on normal pool operations and maintenance. There are no changes in equipment design or in plant configuration. This new requirement will not result in the installation of any new equipment or modification of any existing equipment.

Therefore, the proposed change will not result in the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No.

The Technical Specification changes proposed by this License Amendment request and the resulting spent fuel storage operation limits will provide adequate safety margin to ensure that the stored fuel assembly array will always remain subcritical. Those limits are based on a San Onofre Nuclear Generating Station (SONGS), Units 2 and 3 plant specific analysis performed in accordance with a methodology previously approved by the NRC.

The proposed change takes partial credit for soluble boron in the spent fuel pool. SCE's analyses show that spent fuel storage requirements meet the following NRC acceptance criteria for preventing criticality outside the reactor:

(1) The neutron multiplication factor, K_{eff}, including all uncertainties, shall be less than 1.0 when flooded with unborated water, and,

(2) The neutron multiplication factor, K_{eff}, including all uncertainties, shall be less than or equal to 0.95 when flooded with borated water.

The criticality analysis utilized credit for soluble boron to ensure K_{eff} will be less than or equal to 0.95 under normal circumstances, and storage configurations have been defined using a 95/95 K_{eff} calculation to ensure that the spent fuel rack will be less than 1.0 with no soluble boron. Soluble boron credit is used to provide safety margin by maintaining K_{eff} less than or equal to 0.95 including uncertainties, tolerances and accident conditions in the presence of spent fuel pool soluble boron. The loss of a substantial amount of soluble boron from the spent fuel pool water which could lead to K_{eff} exceeding 0.95 has been evaluated and shown to not be credible.

Also, the spent fuel rack K_{eff} will remain less than 1.0 with the spent fuel pool flooded with unborated water.

Decay heat, radiological effects, and seismic loads are unchanged by the absence of Boraflex.

Therefore, the proposed change does not involve a significant reduction in the plant's margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Section Chief: Stephen Dembek.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: January 28, 2002.

Description of amendment request: The proposed amendment revises Technical Specifications (TS) 4.4.5.3a, ''Steam Generator Surveillance Requirements,'' inservice inspection frequency requirements for Unit 1 immediately after the first refueling outage (1RE09) and Unit 2 after the second refueling outage (2RE10). The change would allow a 40-month inspection interval after one inspection resulting in C–1 classification, rather than two consecutive inspection resulting in C–1 classification. The change is proposed to eliminate steam generator inspections, which will result in significant dose, schedule and cost savings.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

There is no direct increase in SG [steam generator] leakage because the proposed change does not alter the plant design. The scope of inspections performed during 1RE10, the first refueling outage following SG replacement, exceeded the TS requirements for the first two refueling outages after

replacement combined. That is, more tubes were inspected than were required by TS. Currently, South Texas Project Unit 1 does not have an active SG damage mechanism and will meet the current industry examination guidelines without performing inspections during the next refueling outage. The results of the Condition Monitoring Assessment after 1RE10 demonstrated that all performance criteria were met during 1RE10. The results of the 1RE10 Operational Assessment show that all performance criteria will be met over the proposed operating period. The results from 2RE10 inspections are expected to be the same. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change will not alter any plant design basis or postulated accident resulting from potential SG tube degradation. The scope of inspections performed during 1RE10 and planned for 2RE10, the first refueling outage for each unit following SG replacement, significantly exceed the TS requirements for the scope of the first two refueling outages after SG replacement combined.

The proposed change does not affect the design of the SGs, the method of operation, or reactor coolant chemistry controls. No new equipment is being introduced and installed equipment is not being operated in a new or different manner. The proposed change involves a one-time extension to the SG tube inservice inspection frequency, and therefore will not give rise to new failure modes. In addition, the proposed change does not impact any other plant system or components. Therefore the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Steam generator tube integrity is a function of design, environment, and current physical condition. Extending the SG tube inservice inspection frequency by one operating cycle will not alter the function or design of the SGs. Inspections conducted prior to placing the SGs into service (pre-service inspections) and inspection during the first refueling outage following SG replacement demonstrate that the SGs do not have fabrication damage or an active damage mechanism. The scope of those inspections significantly exceeded those required by the TS. These inspection results were comparable to similar inspection results for the same model of RSGs [replacement steam generators] installed at other plants, and subsequent inspections at those plants yielded results that support this extension request. The improved design of the replacement SGs also provides reasonable assurance that significant tube degradation is not likely to occur over the proposed operating period. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Morgan Lewis, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

NRC Section Chief: Robert A. Gramm.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: February 18, 2002.

Description of amendment request: The proposed amendment revises Technical Specification (TS) 3/4.6.1.7, ''Containment Ventilation System,'' to extend the intervals between operability tests of the normal and supplementary containment purge valves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Operability and leakage control effectiveness of the containment purge isolation valves have no effect on whether or not an accident occurs. Consequently, increasing the interval between surveillances of isolation valve effectiveness does not involve a significant increase in the probability of an accident previously evaluated.

The consequences of a non-isolated reactor containment building at the time of a fuel-handling accident or LOCA [loss-of-coolant accident] is release of radionuclides to the environment. Analyses have conservatively assumed that a purge system line is open at the time of an accident, and release to the environment continues until the isolation valves are closed. In addition, LOCA analyses assume containment leakage of 0.3 percent per day for the first 24-hours and 0.15 percent per day thereafter. Consequently, increasing the interval between surveillances of isolation valve effectiveness does not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed changes do not involve a modification to the physical configuration of the plant (i.e., no new equipment will be installed) or change in the methods governing normal plant operation. The proposed change will not impose any new or different requirements or introduce a new accident initiator, accident precursor, or malfunction mechanism. The function of the containment purge systems is not altered by this change. Therefore, this proposed change does not create the possibility of an accident of a different kind than previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

Response: No.

This proposed change only increases the interval between surveillance tests of the containment purge valves. Analyses have conservatively assumed that the normal purge valves are open at the time of a fuel handling accident, and that purging by the supplementary purge system is in progress at the time of a loss of coolant accident. In addition, LOCA analyses assume containment leakage of 0.3 percent per day for the first 24-hours and 0.15 percent per day thereafter. The radiological consequences of both a fuel handling accident and a LOCA are unchanged and remain within the 10 CFR 100 limits. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Morgan Lewis, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

NRC Section Chief: Robert A. Gramm.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: June 21, 2001, as supplemented on February 8, 2002.

Description of amendment request: This amendment request proposes to revise the control rod block instrumentation requirements contained in Technical Specification (TS) 2.1.B, Figure 2.1.1, and Tables 3.2.5 and 4.2.5. Some of the control rod block trip functions are being relocated to the Vermont Yankee Technical Requirements Manual and some of the requirements for the retained trip functions are being clarified. Two trip functions are added to the TSs and Note 9 to Table 3.2.5 is changed to reflect one or two Rod Block Monitor channels inoperable. This proposed no significant hazards consideration determination replaces in its entirety the notice published in the **Federal Register** on July 25, 2001 (66 FR 38769).

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The relocated trip functions are not assumed as initial conditions for, nor are they credited in the mitigation of, any design basis accident or transient previously evaluated. Since reactor operation with these revised and relocated Specifications is fundamentally unchanged, no design or analytical acceptance criteria will be exceeded. As such, this change does not impact initiators of analyzed events, or the analyzed mitigation of design basis accident or transient events.

More stringent requirements that ensure operability of equipment and purely administrative changes do not affect the initiation of any event, nor do they negatively impact the mitigation of any event. The addition of remedial actions to address a condition when both channels of the Rod Block Monitor (RBM) are inoperable also ensures that the RBM function is met. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

None of the proposed changes affects any parameters or conditions that could contribute to the initiation of any accident. No new accident modes are created since plant operation is unchanged in that required protective features remain operable. No safety-related equipment or safety functions are altered as a result of these changes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

This change does not impact plant equipment, nor does it involve operation with loss of any safety function. There are no changes being made to safety limits or safety system settings that would adversely affect plant safety as a result of the proposed changes. Since the changes have no effect on any safety analysis assumptions or initial conditions, the margins of safety in the safety analyses are maintained. In addition, administrative changes that do not change technical requirements or meaning, and the imposition of more stringent or equivalent remedial requirements to ensure operability, have no negative impact on margins of safety. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: James W. Clifford.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: September 11, 2001.

Brief description of amendments: The amendments revise Technical Specification Section 3.9.5, ''Shutdown Cooling (SDC) and Coolant Circulation—Low Water Level,'' by adding a note that allows one SDC loop to be inoperable for a period of 2 hours provided the other loop is operable while in Mode 6.

Date of issuance: March 1, 2002.

Effective date: March 1, 2002, and shall be implemented within 45 days of the date of issuance.

Amendment Nos.: Unit 1–139, Unit 2–139, Unit 3–139.

Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 28, 2001 (66 FR 59501).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 1, 2002.

No significant hazards consideration comments received: No.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: November 19, 2001.

Brief description of amendments: The amendments authorized revisions to the Calvert Cliffs Nuclear Power Plant Updated Final Safety Analysis Report to incorporate revisions to the loss of feedwater flow analysis.

Date of issuance: February 26, 2002.

Effective date: As of the date of issuance and shall be implemented in conformance with the scheduling requirements specified in 10 CFR 50.71e.

Amendment Nos.: 248, 224.

Renewed Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised Appendix C of the licenses.

Date of initial notice in ***Federal Register:*** January 8, 2002 (67 FR 925).

The Commission's related evaluation of these amendments is contained in a

Safety Evaluation dated February 26, 2002.

No significant hazards consideration comments received: No.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: December 20, 2000, as supplemented on July 12, 2001.

Brief description of amendments: The amendments revise the Technical Specifications to incorporate changes required to support operation with replacement steam generators.

Date of issuance: March 1, 2002.

Effective date: As of the date of issuance and shall be implemented prior to restart following replacement of the steam generators.

Amendment Nos.: 249 and 225.

Renewed Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 7, 2001 (66 FR 13799).

The July 12, 2001, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated March 1, 2002.

No significant hazards consideration comments received: No.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: July 27, 2001.

Brief description of amendments: The amendments modify the conditions and required actions for the control room emergency ventilation system (CREVS) and control room emergency temperature system (CRETS) of Technical Specifications (TS) 3.7.8 and 3.7.9. A Note is added to TS 3.7.8 and the Note for TS 3.7.9 is revised to specify train operability requirements during the movement of irradiated fuel assemblies.

Date of issuance: March 4, 2002.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 250, 226.

Renewed Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 5, 2001 (66 FR 46475).

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated March 4, 2002.

No significant hazards consideration comments received: No.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, (CNS) Units 1 and 2, York County, South Carolina

Date of application for amendments: August 6, 2001.

Brief description of amendments: The amendments revised the Technical Specifications (TS) by decreasing the CNS Unit 1 Overtemperature Delta Temperature Allowable Value and the CNS Units 1 and 2 Overpower Delta Temperature Allowable Values in TS Table 3.3.1–1. In addition, the amendments make two minor editorial changes in the TS Table of Contents and Bases Page 3.3.1–10.

Date of issuance: February 26, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 195/188.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 22, 2002 (67 FR 2920). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 26, 2002.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket No. 50–287, Oconee Nuclear Station, Unit 3, Oconee County, South Carolina

Date of application of amendments: March 5, 2001, as supplemented by letter dated September 4, 2001.

Brief description of amendments: The amendment revised the Technical Specifications to allow a one-time extension to the interval for conducting the 10 CFR part 50, Appendix J containment integrated leak rate test.

Date of Issuance: February 28, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 321.

Renewed Facility Operating License No. DPR–55: Amendment revised the Technical Specification.

Date of initial notice in ***Federal Register:*** October 3, 2001 (66 FR 50466). The supplement dated September 4, 2001, provided clarifying information that did not change the scope of the March 5, 2001, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 28, 2002.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: January 31, 2002.

Brief description of amendment: The amendment revised the Technical Specifications by replacing the peak linear heat rate safety limit with a peak fuel centerline temperature safety limit.

Date of issuance: March 4, 2002.

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment No.: 238.

Facility Operating License No. NPF–6: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 11, 2002 (67 FR 6279). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 4, 2002.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: July 10, 2001, as supplemented by letter dated December 20, 2001.

Brief description of amendment: Technical Specification (TS) Surveillance Requirement (SR) 4.8.1.1.2.e requires certain emergency diesel generator (EDG) surveillances be performed during shutdown. This change modifies this SR to allow performance of specific surveillances during any mode of plant operation. This provides the flexibility in the scheduling of testing activities consistent with online maintenance activities and improves EDG availability during plant shutdown periods.

Date of issuance: February 26, 2002.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 180.

Facility Operating License No. NPF–38: The amendment revised the TS.

Date of initial notice in ***Federal Register:*** August 22, 2001 (66 FR 44168).

The December 20, 2001, supplemental letter contained clarifying information that did not change the scope of the July 10, 2001, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 26, 2002.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: January 31, 2002.

Brief description of amendment: The amendment replaces the Technical Specification (TS) Safety Limit 2.1.1.2, ''Peak Linear Heat Rate,'' (PLHR) with a Peak Fuel Centerline Temperature Safety Limit and updates the Index accordingly. The associated TS Bases changes have been made to appropriately reflect the proposed new Safety Limit.

Date of issuance: March 5, 2002.

Effective date: As of the date of issuance and shall be implemented 30 days from the date of issuance.

Amendment No.: 181.

Facility Operating License No. NPF–38: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 11, 2002 (67 FR 6281).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 5, 2002.

No significant hazards consideration comments received: No.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Dade County, Florida

Date of application for amendments: May 14, 2001.

Brief description of amendments: The amendments deleted Technical Specification (TS) Figures 5.1–1, ''Site Area Map''; and 5.1–2, ''Plant Area Map''; and replaced TS 5.1, ''Site,'' with a site location description. Conforming changes also deleted TS 5.1.1, ''Exclusion Area''; TS 5.1.2, ''Low Population Zone''; and TS 5.1.3, ''Map Defining Unrestricted Areas and Site Boundary for Radioactive Gaseous and Liquid Effluents''; from TS 5.1 and the TS Index.

Date of issuance: February 12, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos: 219 and 213.

Facility Operating License Nos. DPR–31 and DPR–41: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 27, 2001 (66 FR 34284). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 12, 2002.

No significant hazards consideration comments received: No.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida

Date of application for amendments: July 18, 2001.

Brief description of amendments: The amendments revised Turkey Point Units 3 and 4 Technical Specifications, Section 6.0, ''Administrative Controls.'' The revision consists of changing the title of the corporate executive responsible for overall nuclear plant safety from ''President—Nuclear Division'' to ''Chief Nuclear Officer.''

Date of issuance: February 21, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos: 220 and 214.

Facility Operating License Nos. DPR–31 and DPR–41: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 8, 2001 (66 FR 41622). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 21, 2002.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: November 1, 2001.

Brief description of amendments: The amendments revise technical specification (TS) surveillance requirements (SR) 4.8.2.3.2.c.2 and 4.8.2.5.2.c.2 and associated TS bases concerning the safety-related batteries to make them more consistent with the Westinghouse Standard TSs.

Date of issuance: February 26, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 266 and 247.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 12, 2001 (66 FR 64296). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 26, 2002.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: October 5, 2001, as revised on January 4, 2002.

Brief description of amendment: The amendment imposes a new license condition in Operating License NPF–69 to approve a change in the licensing basis regarding post-safety-injection hydrogen monitoring. Specifically, the amendment changes the permissible delay from 30 minutes to 90 minutes.

Date of issuance: February 25, 2002.

Effective date: As of the date of issuance to be implemented during Refueling Outage 8.

Amendment No.: 102.

Facility Operating License No. NPF:–69 Amendment revises the the operating license.

Date of initial notice in ***Federal Register:*** January 22, 2002 (67 FR 2925). The staff's related evaluation of the amendment is contained in a Safety Evaluation dated February 25, 2002.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: March 29, 2001, as supplemented October 30, 2001.

Brief description of amendment: The amendment revised the Technical Specifications (TS), Section 3.8.5, ''DC [Direct Current] Sources—Shutdown,'' restoring the operability requirement to what it was before the TS was converted to the Improved Standard Technical Specifications format (i.e., Amendment No. 91).

Date of issuance: March 1, 2002.

Effective date: As of the date of issuance, to be implemented prior to Refueling Outage 8.

Amendment No.: 103.

Facility Operating License No. NPF–69: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 30, 2001 (66 FR 29359).

The licensee's October 30, 2001, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The staff's related evaluation of the amendment is contained in a Safety Evaluation dated March 1, 2002.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: August 15, 2001.

Brief description of amendment: The amendment revised the Technical Specifications (TS) to extend the channel calibration surveillance frequency for the automatic depressurization system timers from 18 months to 24 months.

Date of issuance: February 26, 2002.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 245.

Facility Operating License No. DPR–49: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 3, 2001 (66 FR 50469). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 26, 2002.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: March 2, 2001, as supplemented March 29, September 14, and December 27, 2001.

Brief description of amendment: The amendment changes the Technical Specifications to increase the limits on stored fuel enrichments and provide other more flexible fuel loading constraints for the storage racks for new and spent fuel.

Date of issuance: February 26, 2002.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 207.

Facility Operating License No. DPR–20. Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 1, 2001 (66 FR 29844). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 26, 2002.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: November 21, 2001.

Brief description of amendment: The amendment adds three topical report references to Technical Specification (TS) 5.9.5, ''Core Operating Limits Report.''

Date of issuance: March 4, 2002.

Effective date: March 4, 2002, to be implemented within 60 days from the date of issuance.

Amendment No.: 203.

Facility Operating License No. DPR–40: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 26, 2001 (66 FR 66471).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 4, 2002.

No significant hazards consideration comments received: No.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: October 18, 2001, as supplemented February 5, 2002.

Brief description of amendments: The amendments revised the Technical Specifications surveillance requirement 3.4.3.1 for testing of the main steam safety relief valves to permit the setpoint tolerance for ''as-found'' testing to be changed from ±1 percent to ±3 percent. An editorial change will also be made to remove a note regarding an associated relief request.

Date of issuance: March 7, 2002.

Effective date: As of the date of issuance, and shall be implemented during the spring 2002, and spring 2003, refueling and inspection outages for Units 1 and 2, respectively.

Amendment Nos.: 201, 175.

Facility Operating License Nos. NPF–14 and NPF–22: The amendments revised the TSs.

Date of initial notice in ***Federal Register:*** November 28, 2001 (66 FR 59511).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 7, 2002.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: March 5, 2001, as supplemented on December 17, 2001.

Brief description of amendment: The amendment revises License Condition 2.E in the Facility Operating License (FOL) to reflect Nuclear Regulatory Commission (NRC) staff approval of a change to the Salem-Hope Creek Security Plan and the Salem-Hope Creek Security Training and Qualification Plan. The specific change reviewed and approved by the NRC staff will allow illumination levels to be maintained at a minimum of 0.2 footcandle in the isolation zone while allowing lighting in the remainder of the protected area to be sufficient as determined by the licensee, rather than requiring a minimum 0.2 footcandle illumination level in the entire protected area.

Date of issuance: February 22, 2002.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 138.

Facility Operating License No. NPF–57: This amendment revised the FOL.

Date of initial notice in ***Federal Register:*** July 11, 2001 (66 FR 36343). The letter dated December 17, 2001, withdrew a portion of the March 5, 2001, application which would have changed the escort requirements for vehicles in the protected area. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 22, 2002.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: March 5, 2001, as supplemented on December 17, 2001.

Brief description of amendments: The amendments revise License Condition 2.E in each of the respective Facility Operating Licenses (FOLs) to reflect Nuclear Regulatory Commission (NRC) staff approval of a change to the Salem-Hope Creek Security Plan and the Salem-Hope Creek Security Training and Qualification Plan. The specific change reviewed and approved by the NRC staff will allow illumination levels to be maintained at a minimum of 0.2 footcandle in the isolation zone while allowing lighting in the remainder of the protected area to be sufficient as determined by the licensee, rather than requiring a minimum 0.2 footcandle illumination level in the entire protected area.

Date of issuance: February 22, 2002.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment Nos.: 250 and 230.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised each of the respective FOLs.

Date of initial notice in ***Federal Register:*** June 27, 2001 (66 FR 34288). The letter dated December 17, 2001, withdrew a portion of the March 5, 2001, application which would have changed the escort requirements for vehicles in the protected area. The

Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 22, 2002.

No significant hazards consideration comments received: No.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: June 19, 2001.

Brief description of amendment: This amendment revises V. C. Summer Technical Specification 3.4.6.2.f by increasing the allowable operational leakage rate for 23 of the 35 reactor coolant system pressure isolation valves listed in TS Table 3.4–1. This change implements a size-dependent allowable leakage rate of 0.5 gallon per minute per nominal inch of valve diameter, up to a maximum of 5 gallons per minute per valve.

Date of issuance: February 14, 2002.

Effective date: February 14, 2002.

Amendment No.: 154.

Facility Operating License No. NPF–12: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 8, 2001 (66 FR 41626). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 14, 2002.

No significant hazards consideration comments received: No.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: June 19, 2001.

Brief description of amendment: This amendment revises Technical Specifications (TS) Table 3.7–1 by lowering the maximum allowable power range neutron flux high setpoints when one or more main steam line safety valves are inoperable. The Bases for TS 3/4.7.1.1 is also revised to include the algorithm used for determining the new allowable values.

Date of issuance: February 21, 2002.

Effective date: February 21, 2002.

Amendment No.: 155.

Facility Operating License No. NPF–12: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 14, 2001 (66 FR 57125).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 21, 2002.

No significant hazards consideration comments received: No.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: August 20, 2001.

Brief description of amendment: This amendment revises the Technical Specifications by adding a footnote to Table 3.3–3 regarding the Steam Line Isolation and Engineered Safety Feature Actuation System (ESFAS) functions. This revision will allow V.C. Summer to exclude ESFAS steam line isolation instrumentation operability in Mode 3 when the main steam isolation valves, along with associated bypass valves, are closed and disabled, and eases the restriction of Specification 3.0.4 when performing reactor coolant system resistance temperature device cross calibrations at temperatures below the ESFAS P–12 Interlock for Low-Low $T_{avg.}$

Date of issuance: March 5, 2002.

Effective date: March 5, 2002.

Amendment No.: 156.

Facility Operating License No. NPF–12: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 12, 2001 (66 FR 64301). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 5, 2002.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: December 11, 2001.

Brief description of amendments: The amendments revise Technical Specification (TS) 3.8.3, ''Diesel Fuel Oil, Lube Oil, and Starting Air,'' to support the use of California Diesel fuel rather than the existing Environmental Protection Agency Clear diesel fuel, and reflect a change in the diesel generator load profile in Modes 1 through 4.

Date of issuance: March 5, 2002.

Effective date: March 5, 2002, to be implemented within 30 days of issuance.

Amendment Nos.: Unit 2—183; Unit 3—174.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 8, 2002 (67 FR 932). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 5, 2002.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–321, Edwin I. Hatch Nuclear Plant, Unit 1, Appling County, Georgia

Date of application for amendment: August 31, 2001, supplemented January 24, 2002.

Brief description of amendment: The amendment revised the Technical Specifications to allow a one-time deferral of the Type A Containment Integrated Leak Rate test based on the risk-informed guidance in Regulatory Guide 1.174.

Date of issuance: February 20, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 226.

Facility Operating License No. DPR–57: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 17, 2001 (66 FR 52802). The supplement dated January 24, 2002, provided clarifying information that did not change the scope of the August 31, 2001, application nor the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 20, 2002.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: August 31, 2001, supplemented November 15, 2001, and February 21, 2002.

Brief description of amendments: The amendments revised the Technical Specifications on a one-time basis to extend from 7 days to 14 days the completion time for the required actions associated with restoration of the 1B emergency diesel generator (EDG). The NRC review of the August 31, 2001, amendment request to extend the completion times for all of the EDGs to

14 days on a permanent basis is ongoing.

Date of issuance: February 22, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 227/169.

Facility Operating License Nos. DPR–57 and NPF–5: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 17, 2001 (66 FR 52803). The supplemental letters dated November 15, 2001, and February 21, 2002, provide clarifying information that did not change the scope of the August 31, 2001, application nor the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 22, 2002.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: December 14, 2001.

Brief Description of amendments: The amendments revise Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period is extended from the current limit of ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less'' to ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater.'' In addition, the following requirement is added to SR 3.0.3: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.''

Date of issuance: March 6, 2002.

Effective date: As of the date of issuance and shall be implemented by August 1, 2002.

Amendment Nos.: 153/145.

Facility Operating License Nos. NPF–2 and NPF–8: Amendments revise the Technical Specifications and associated Bases.

Date of initial notice in ***Federal Register:*** January 22, 2002 (67 FR 2928). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 6, 2002.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of application for amendments: August 10, 2001, as supplemented February 11, 2002.

Description of amendment request: The amendments revised Technical Specification 3.9.1, ''Refueling Equipment Interlocks,'' to allow in-vessel fuel movement to continue with inoperable refueling equipment interlocks, provided (1) control rod withdrawals are blocked and (2) all control rods are verified to be inserted.

Date of issuance: March 6, 2002.

Effective date: March 6, 2002.

Amendment Nos.: 242, 274, and 232.

Facility Operating License Nos. DPR–33, DPR–52, and DPR–68: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 14, 2001 (66 FR 57126). The February 11, 2002, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 6, 2002.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: April 20, 2001, as supplemented October 29, 2001, and November 14, 2001.

Brief description of amendment: Amends the Final Safety Analysis Report by changing the spent fuel pool (SFP) cooling analysis methodology to increase the evaluated heat removal capacity of the SFP cooling system.

Date of issuance: February 21, 2002.

Effective date: This license amendment is effective as of its date of issuance and shall be implemented within 30 days.

Amendment No.: 37.

Facility Operating License No. NPF–90: Amendment does not revise the operating license or its appendices.

Date of initial notice in ***Federal Register:*** December 17, 2001 (66 FR 64998). The supplemental letters provided clarifying information that was within the scope of the initial notice and did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 21, 2002.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: April 10, 2000, as supplemented by letters dated September 18, 2000, August 22, 2001, November 8, 2001, and January 15, 2002.

Brief description of amendment: The amendment incorporates new requirements into the Technical Specifications (TS) associated with steam generator (SG) tube inspection and repair, establishing an alternate voltage-based SG tube repair criteria.

Date of issuance: February 26, 2002.

Effective date: As of the date of issuance and shall be implemented prior to startup following the Cycle 4 refueling outage.

Amendment No.: 38.

Facility Operating License No. NPF–90: Amendment revises the TS.

Date of initial notice in ***Federal Register:*** May 31, 2000 (65 FR 34751). The supplemental letters provided clarifying information that was within the scope of the initial notice and did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 26, 2002.

No significant hazards consideration comments received: No.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: December 18, 2001.

Brief description of amendments: The amendments revise Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period is extended from the current limit of ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less'' to ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater.'' In addition, the following requirement is added to SR 3.0.3: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.''

Date of issuance: February 22, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 92 and 92.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 22, 2002 (67 FR 2931). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 22, 2002.

No significant hazards consideration comments received: No.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: December 11, 2001.

Brief description of amendment: The amendment revises Surveillance Requirement (SR) 3.0.3 to extend the delay period before entering a limiting condition for operation following a missed SR from the current limit of ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less'' to ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater.'' In addition, the following requirement is added to SR 3.0.3: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.''

Date of issuance: March 4, 2002.

Effective date: March 4, 2002, and shall be implemented within 60 days from the date of issuance.

Amendment No.: 143.

Facility Operating License No. NPF–42: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 8, 2002 (67 FR 935). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 4, 2002.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 11th day of March 2002.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–6230 Filed 3–18–02; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

Briefing on Regulatory Developments

AGENCY: Postal Rate Commission.

ACTION: Notice of regulatory briefing.

SUMMARY: A delegation from Britain's Postal Services Commission (Postcomm), the independent regulator of Consignia (formerly the British Post Office), will present a briefing on Wednesday, March 27, 2002, beginning at 10 a.m., in the Postal Rate Commission's hearing room. The topic is recent regulatory developments in the United Kingdom. The briefing is open to the public.

DATES: March 27, 2002, 10 a.m.

ADDRESSES: Postal Rate Commission (hearing room), 1333 H Street NW., Washington, DC 20268–0001, suite 300.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, general counsel, Postal Rate Commission, 202–789–6820.

Steven W. Williams,

Secretary.

[FR Doc. 02–6534 Filed 3–18–02; 8:45 am]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27497]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

March 12, 2002.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 8, 2002, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After April 8, 2002, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

E.ON AG, et al. (70–9985)

E.ON AG (''E.ON''), a German company; E.ON's subsidiary companies, E.ON UK Verwaltungs GmbH (''E.ON UK''), E.ON UK plc, E.ON US Verwaltungs GmbH (''E.ON US''), E.ON Holdco (if formed) all located at E.ON-Platz 140479, Düsseldorf, Germany; Fidelia, Inc. (''Fidelia''), a finance company subsidiary organized in Delaware; E.ON North America Inc. (''E.ON NA''); Powergen plc (''Powergen''), a U.K. registered holding company; Powergen's direct and indirect wholly owned registered holding company subsidiaries, Powergen US Holdings Limited (''Powergen US Holdings''), Powergen US Investments, Powergen Luxembourg sarl, Powergen Luxembourg Holdings sarl, Powergen Luxembourg Investments sarl, Powergen US Investments Corp.(''PUSIC'' and together, ''Powergen Intermediate Companies''); Powergen US Funding LLC (''Powergen US Funding''), a financing vehicle for Powergen US Holdings, all located at 53 New Broad Street, London EC2M 1SL, United Kingdom; LG&E Energy Corp. (''LG&E Energy''), a Kentucky holding company exempt from registration under section 3(a)(1) of the Act, located at 220 West Main Street, Louisville, Kentucky 40232; LG&E Energy's utility subsidiaries Louisville Gas and Electric Company (''LG&E'') and Kentucky Utilities Company (''KU'' and together, ''Utility Subsidiaries''), One Quality Street, Lexington, Kentucky 40507; and LG&E Energy's nonutility companies located at 220 West Main Street, Louisville, Kentucky 40232 (''LG&E Nonutilities,'' together with LG&E Energy and the Utility Subsidiaries, ''LG&E Energy Group'' and collectively, ''Applicants'') have filed an application (''Application'') under sections 6(a), 7, 9(a), 10, 12, 13 of the Act and rules 45, 46, 52, 53, 54, 90 and 91 under the Act. Applicants request authority for various financing transactions and service agreements related to the acquisition by E.ON of Powergen and its subsidiaries (''Acquisition''). The Commission published a notice describing the application for the Acquisition (''Acquisition Application'') on December 21, 2001.[1] Following the Acquisition, E.ON intends to register under section 5 of the Act. Applicants intend that the LG&E Energy Group be transferred from the Powergen intermediate holding companies (''Powergen Intermediate Holding Companies'') and held indirectly by

[1] *See* E.ON AG plc, et al. HCAR No. 27482 (December 21, 2001).

E.ON US and its subsidiary holding companies (''Intermediate Companies'').[2]

I. Summary of Financing Proposals

Applicants seek Commission authorization for certain financing activities of E.ON and its subsidiaries (''E.ON Group'') through May 31, 2005 (''Authorization Period''). In summary, Applicants request authority for: (i) Various financings by E.ON, including the issuance of common stock and American Depositary Shares (''ADRs''), preferred stock, short and long-term debt, currency and interest rate swaps and guarantees; (ii) certain financings by (a) the direct and indirect holding company parents of LG&E Energy, (b) the LG&E Energy Group and (c) E.ON UK plc; (iii) the continuation by LG&E and KU of their respective receivables factoring programs; (iv) the creation of money pools and certain intercompany financing arrangements; (v) the payment of dividends out of capital or unearned surplus; (vi) the LG&E Energy Group tax allocation agreement; (vii) changing the terms of any wholly-owned E.ON Group company's authorized capital stock, the issuance of additional shares, or alteration of the terms of any then existing authorized security; (viii) the formation of and the issuance by financing entities of securities otherwise authorized to be issued and sold under this Application or applicable exemptions under the Act; (ix) authorization for Powergen, Powergen US Holdings and Powergen US Funding to issue certain debt securities; (x) authorization to invest in exempt wholesale generators (''EWGs''), as defined in section 32 of the Act and foreign utility companies (''FUCOs''), as defined in section 33 of the Act and (xi) authorization to invest in energy-related companies.

II. General Financing Parameters

Applicants represent that the proposed transactions will be subject to the following general terms and conditions (''Financing Parameters'') during the Authorization Period:

- The aggregate amount of external debt, equity and guarantees issued by E.ON under the authorizations requested in this Application will not exceed $75 billion at any one time outstanding (''External Financing Limit''). Within the External Financing Limit, Applicants propose that no more than $25 billion will consist of equity securities (''Equity Sublimit''), no more than $40 billion will consist of debt securities (''Debt Sublimit'') and no more than $40 billion will consist of guarantees (''Guarantees'').
- The External Financing Limit represents investments in the following areas, generally: (i) $25 billion of investments in EWGs and FUCOs, (ii) $35 billion of investments in EWGs and FUCOs financed by bridge loans (''Bridge Loans'') pending the receipt of proceeds from the divestiture of certain non-energy related companies (''TBD Subsidiaries''),[3] (iii) $5.5 billion for investments in TBD Subsidiaries pending divestiture, and (iv) $10 billion for investments in energy related subsidiaries. In addition to the capital expenditure program described above, as of September 30, 2001, E.ON and Powergen had debt securities outstanding in the amount of approximately $12.9 billion and $7.4 billion, respectively. Funds raised under the External Financing Limit will be used to refinance, repay, redeem or refund some of such debt over the course of the Authorization Period.
- The aggregate amount of short-term external debt issued by LG&E Energy under the authorizations requested in this Application will not exceed $400 million at any one time outstanding.
- Each of E.ON, LG&E, and KU commit that all long-term debt and preferred stock issued by it to unaffiliated parties under the authorization requested in this Application will, when issued, be rated investment grade by a nationally recognized statistical rating organization.
- E.ON and LG&E Energy, each on a consolidated basis, and LG&E and KU, individually, will maintain common stock equity as a percentage of total capitalization of at least thirty percent, as reflected in their most recent annual or semiannual report, in the case of E.ON, and, with respect to LG&E Energy, LG&E and KU, quarterly or other periodic earnings report, prepared in accordance with United States Generally Accepted Accounting Principles (''US GAAP'').
- The effective cost of money on debt financings by E.ON, LG&E Energy and the Utility Subsidiaries will not exceed the competitive market rates available at the time of issuance for securities having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality.
- The maturity of debt issued by E.ON will not exceed fifty years.
- The dividend rate on preferred stock or other types of preferred securities issued by E.ON will not exceed, at the time of issuance, the rate generally obtainable for preferred securities having the same or reasonably similar terms and conditions issued by companies of reasonably comparable credit quality, as determined by competitive capital markets.

III. Existing Financing Arrangements

A. E.ON's Current Capital Structure

Applicants state that E.ON shares are listed on all German stock exchanges, the Swiss Stock Exchange and as ADRs on the New York Stock Exchange. E.ON's financial statements are maintained in accordance with U.S. GAAP. As of December 31, 2001, E.ON had 692.0 million common shares issued and approximately 687.3 million outstanding shares. E.ON recently completed the repurchase of 76.3 million shares, approximately ten percent of the company's capital stock and is authorized by its shareholders to repurchase up to ten percent of its common stock through October 31, 2002. E.ON has cancelled 71.3 million of the repurchased shares.

IV. E.ON External Financing

Applicants propose that E.ON issue and sell securities and guarantee the obligations of its subsidiaries in an aggregate amount not to exceed the External Financing Limit outstanding at any one time during the Authorization Period. Securities would include common stock, preferred stock, options, warrants, unsecured long and short-term debt including commercial paper, convertible/exchangeable securities, lease financing, bank borrowings and securities with call or put options.

A. Equity Securities

Applicants request authorization for E.ON to issue and sell, from time to time during the Authorization Period, common stock: (a) Through

[2] The acquisition and transfer of Powergen and the LG&E Energy Group are more fully described in the notice to the Acquisition Application. Prior to the transfer, Powergen US Holdings, Powergen US Investments, Powergen Luxembourg, Powergen Luxembourg Holdings, Powergren Luxembourg Investments and Powergen US Investments Corp. are referred to as the ''Powergen Intermediate Holding Companies.'' After the transfer of PUSIC and the LG&E Energy Group to E.ON US and its subsidiaries, Powergen US Holdings, Powergen US Funding and the subsidiaries of Powergen US Holdings will be referred to as the ''Powergen Financing Entities.'' The Intermediate Companies will consist of E.ON US, PUSIC and E.ON Holdco, if formed.

[3] E.ON will divest certain businesses which are not energy related and use the proceeds of this divestiture to pay down debt issued in the interim to finance additional investment in energy related companies or utility purchases authorized in separate future applications. E.ON's business objective is more fully described in the Acquisition Application. E.ON's retainable nonutility companies will be referred to as the ''Retained Nonutility Subsidiaries.''

underwritten public offerings; (b) in private placements; (c) in exchange for securities or assets being acquired from other companies; (d) under its dividend reinvestment, stock-based management incentive and employee benefit plans; (e) through subscription rights or (f) through non-underwritten offerings. Applicants also propose that E.ON issue and sell options, warrants or other stock purchase rights. The authorization to issue and sell common stock would also apply to the issuance of common stock directly or through the ADR program and, for purposes of this request, the ADRs would not be considered separate securities from the underlying common stock.

Common stock and other equity instruments may be sold through underwriting agreements of a type generally standard in the industry in Europe or the U.S. Public distributions, if underwritten, may be through private negotiation with underwriters, dealers or agents, or effected through competitive bidding among underwriters. In addition, sales may be made through private placements or other non-public offerings to one or more persons. All sales of common stock and other equity instruments will be at rates or prices and under conditions negotiated, based upon or otherwise determined by competitive capital markets.

Applicants request authority for E.ON to use its common stock as consideration for acquisitions authorized under the Act such as the exchange of equity securities for securities of the company being acquired to provide the seller with certain tax advantages. The E.ON ordinary shares to be exchanged may, among other things, be purchased on the open market or may be original issue. E.ON ordinary shares used to fund an acquisition of a company would be valued at market value based upon the closing price on XETRA, Germany's official electronic trading system, on the day before the execution of a definitive agreement or, in the case of a tender offer, on the day of commencement of the offer.

Applicants also request that E.ON use its common stock and other equity instruments to fund employee benefit plans and in connection with dividend reinvestment plans currently in existence or that may be formed during the Authorization Period. E.ON currently maintains various stock-based compensation plans, including some that issue stock appreciation rights.

B. Preferred Stock

Applicants request authority for E.ON to issue preferred stock from time to time during the Authorization Period in accordance with the applicable Financing Parameters. Preferred stock would have dividend rates or methods of determining the same, redemption provisions, conversion or put terms and other terms and conditions as E.ON may determine at the time of issuance.

C. Debt Securities

1. Long-Term Debt

Applicants request authority for E.ON to issue and sell long-term debt securities from time to time during the Authorization Period in accordance with the applicable Financing Parameters. E.ON may also maintain and establish long-term bank lines of credit. Subject to the Financing Parameters, any long-term debt security would have the maturity, interest rate(s) or methods of determining the same, terms of payment of interest, redemption provisions, sinking fund terms, and other terms and conditions as E.ON may determine at the time of issuance.

2. Short-Term Debt

Applicants request authority for E.ON to engage in short-term financing generally available to borrowers with comparable credit ratings, as it may deem appropriate in light of its needs and market conditions at the time of issuance. Specifically, Applicants request authority for E.ON to issue and sell bank lines of credit, institutional borrowings, commercial paper and bid notes. Issuance of short-term debt will be in accordance with the applicable Financing Parameters and will have maturities of less than one year from the date of each borrowing.

D. Interest Rate and Currency Risk Management Devices

1. E.ON

Applicants request authority for E.ON to enter into, perform, purchase, and sell financial instruments intended to manage the volatility of interest rates and currency exchange rates, including but not limited to swaps, caps, floors, collars, and forward agreements or any other similar agreements (''Hedging Instruments'').

In addition, Applicants request authority for E.ON to enter into Hedging Instruments with respect to anticipated debt offerings (''Anticipatory Hedges''), subject to certain limitations and restrictions. Anticipatory Hedges may include: (i) A forward sale of U.S. or European Economic Area (''EEA'') Treasury futures contracts; U.S. or EEA Treasury obligations and/or a forward swap (each a ''Forward Sale''); (ii) the purchase of put options on U.S. or EEA Treasury obligations (''Put Options Purchase''); (iii) a Put Options Purchase in combination with the sale of call options on U.S. or EEA Treasury obligations (''Zero Cost Collar''); (iv) transactions involving the purchase or sale, including short sales, of U.S. or EEA Treasury obligations; or (v) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar, and/or other derivative or cash transactions, including, but not limited to structured notes, caps, and collars, appropriate for the Anticipatory Hedges.

E. Guarantees

Applicants request authorization for E.ON to enter into guarantees, obtain letters of credit, enter into expense agreements or otherwise provide credit support (''Guarantees'') with respect to the obligations of the E.ON Group companies as may be appropriate or necessary to enable these companies to carry on in the ordinary course of their respective businesses. Guarantees, together with other securities issued by E.ON, will not exceed the External Financing Limit in an aggregate amount outstanding during the Authorization Period. All debt guaranteed will comply with the Financing Parameters. Included in this amount are Guarantees entered into by E.ON that were previously issued for the benefit of the E.ON Group companies.

Certain Guarantees may be in support of obligations that are not capable of exact quantification. Applicants state that E.ON will in these cases determine the exposure under a Guarantee for purposes of measuring compliance with the External Financing Limit by appropriate means including estimation of exposure based on loss experience or projected potential payment amounts. E.ON proposes to charge each E.ON Group company a fee for each Guarantee provided on its behalf that is not greater than the cost, if any, of the liquidity necessary to perform the Guarantee and the credit risk assumed by E.ON. As of December 31, 2000, E.ON had issued and outstanding Guarantees on behalf of E.ON Group companies in an aggregate amount of approximately $0.4 billion.

F. Profit and Loss Transfer Agreements

E.ON has entered into profit and loss transfer agreements (''Profit and Loss Transfer Agreements'') with certain subsidiaries organized in Germany under provisions of the German Stock Corporation Act. A Profit and Loss Transfer Agreement automates the

transfer of profits as well as the balancing of losses between the participating companies. Profit and Loss Transfer Agreements are commonly done by German companies for tax optimization and are required to establish a tax group for German corporate income tax purposes. The Profit and Loss Transfer Agreements allow E.ON to direct the management of the subsidiaries and to cause the subsidiaries to distribute their profits or to hold them as retained earnings. If the subsidiaries have losses, E.ON assumes the losses. Like consolidated tax sharing agreements among U.S. corporate groups, the profit and loss transfer agreements permit income from one company to be offset by losses from another, thereby reducing the taxes of the group.

Applicants request authority for E.ON and the E.ON subsidiaries organized in Germany to continue the Profit and Loss Transfer Agreements. Applicants propose that the net exposure of E.ON and the E.ON subsidiaries organized in Germany under the Profit and Loss Transfer Agreements be treated as Guarantees under the External Financing Limit. Since the exposure under the Profit and Loss Transfer Agreements is not capable of exact quantification, Applicants will determine E.ON and the E.ON subsidiaries organized in Germany's aggregate exposure under these agreements for purposes of measuring compliance with the External Financing Limit by estimation of exposure based on prior experience or projected potential payment amounts.

V. E.ON Subsidiary Company Financing

A. TBD Subsidiaries and Retained Nonutility Subsidiaries

E.ON business strategy is to become a pure energy and utility company. As a part of this strategy, E.ON plans to divest the TBD Subsidiaries. Pending divestiture, Applicants propose that E.ON continue to invest in the TBD Subsidiaries in an aggregate amount not to exceed $5.5 billion in order to preserve and protect shareholder value and to prevent any diminution in the value or the prospects of the business until such time as a sale or other exit strategy can be implemented.

Additionally, Applicants request authorization for the E.ON Group, other than the LG&E Energy Group, to finance the TBD Subsidiaries and the Retained Nonutility Subsidiaries at market rates where required by German law. Where the law does not require market rate financing, the E.ON Group, other than the LG&E Energy Group, would finance the TBD Subsidiaries and the Retained Nonutility Subsidiaries at the lending company's cost of capital. Where market rate financing is required, E.ON would determine the appropriate market rate for loans to each TBD Subsidiary or Retained Nonutility Subsidiary or among such entities in much the same manner practiced by an independent bank. E.ON would review the nature of each subsidiary's business, evaluate its capital structure, the particular risks to which it is subject, and generally prevailing market conditions. E.ON would also evaluate and take into account information from third parties such as banks that would indicate the prevailing market rates for similar businesses. In particular, E.ON will obtain information on the range of rates used by one or more banks for loans to similar businesses. Such independent third-party information would serve as an index against which an appropriate market rate could be determined. This analysis is referred to as the ''Market Rate Method.''

B. Powergen Financing Entities

As a result of the legal requirements relating to the Acquisition and certain tax considerations, it may be necessary or desirable following the consummation of E.ON's Acquisition of Powergen for E.ON to delay the transfer of the LG&E Energy Group to the Intermediate Companies (''Interim Period'').[4] During the Interim Period, Powergen and the Powergen Intermediate Holding Companies will retain a voting interest in the LG&E Energy Group companies and remain registered holding companies. Applicants request that during the Interim Period, Powergen and the Powergen Intermediate Holding Companies continue to have the financing authority presently granted to Powergen in its order authorizing the acquisition and financing of the LG&E Group.[5]

Upon the transfer of the LG&E Energy Group companies to the Intermediate Companies, Powergen will continue to own the Powergen Financing Entities. Since the Powergen Financing Entities will no longer own voting securities in the LG&E Energy Group companies, the Powergen Financing Entities will no longer be holding companies under the Act and will de-register as holding companies. Because of financial and tax considerations, Powergen US Holdings, directly or through its financing subsidiary Powergen US Funding, will have external debt outstanding. Additionally, Powergen US Holdings will continue to have a loan outstanding from Powergen UK.[6]

Applicants request that the Powergen Financing Entities be authorized to maintain, repay, refund and otherwise refinance the facilities in place as of the date of the transfer of the LG&E Energy Group companies to the Intermediate Companies (''Transfer Date''), so long as the aggregate principal amount thereof does not at any time exceed the amount available under the facilities as of the Transfer Date. Applicants further request that the Powergen Financing Entities be authorized to loan any proceeds from the facilities to any of the Intermediate Companies and LG&E Energy.

Each of the Powergen Financing Entities requests authorization to issue and sell securities to the other Powergen Financing Entities, Powergen, E.ON UK, E.ON UK plc, and E.ON, and to acquire securities from the other Powergen Financing Entities, the Intermediate Companies and LG&E Energy. Each of the Powergen Financing Entities also seeks authority to issue guarantees and other forms of credit support to the other Powergen Financing Entities, the Intermediate Companies and LG&E Energy. The Powergen Financing Entities would not acquire voting securities of LG&E Energy, its subsidiaries or the Intermediate Companies.

The Powergen Financing Entities proposed financings would be used to finance the capital requirements of the LG&E Energy Group and any exempt or subsequently authorized activity acquired in the future. The Powergen Financing Entities financing will not be used by the Powergen Financing Entities to carry on business activities within the Powergen Financing Entities.

PUSIC, the U.S. parent of the LG&E Energy Group companies, will be transferred by the Powergen Intermediate Holding Companies to E.ON US in exchange for cash and/or a note.[7] Applicants request the authority for E.ON US to issue this note, expected to be in an amount not to exceed the fair

[4] Applicants state that the Interim Period may be up to twelve months.

[5] See Powergen plc, et al., HCAR No. 27291 (December 6, 2000), (''Powergen Order'').

[6] Powergen UK is a subsidiary company of Powergen which holds Powergen's foreign interests. Powergen UK acquired a note from Powergen US Holdings to effect the financing of Powergen's purchase of LG&E Energy Group. This transaction is more fully described in the Powergen Order.

[7] Applicants state that the consideration to be paid for PUSIC will depend on the result of a fair value study that will allocate the Powergen purchase price among Powergen and its subsidiaries. The study will be conducted subsequent to the completion of the Acquisition.

market value of PUSIC, bear interest at a market-based rate and in compliance with the cost of money, maturity and issuance expense provisions of the Financing Parameters.

Applicants request that Powergen, E.ON UK plc and E.ON UK be authorized to issue and sell securities to E.ON and to their direct and indirect parent companies. Applicants also propose that Powergen, E.ON UK plc and E.ON UK receive authorization to acquire securities from their subsidiaries, including the Powergen Financing Entities, issue guarantees and provide other forms of credit support to or for the benefit of their subsidiaries. Powergen and E.ON UK would not issue securities to third parties.

Applicants request that E.ON UK plc issue and sell debt securities, in particular, medium-term notes, to third parties to finance the authorized or permitted activities of the Powergen Group. Debt issued by E.ON UK plc may be guaranteed by E.ON. Financing the Powergen Group through debt issued by E.ON UK plc is expected to be more cost effective due to tax considerations than financing capital needs through E.ON or another E.ON subsidiary and then lending the funds to E.ON UK plc. Any third party debt issued by E.ON UK plc would comply with the cost of money, maturity and issuance expense provisions of the Financing Parameters and would be consolidated into E.ON's consolidated financial statements and would count against the External Financing Limit and the Debt Sublimit.

C. Intermediate Companies

Applicants propose that E.ON hold its interest in LG&E Energy through E.ON US and PUSIC; Intermediate Companies that would be registered holding companies under the Act. Each of the Intermediate Companies requests authorization to issue and sell securities to the other Intermediate Companies and E.ON, and to acquire securities from their direct or indirect Intermediate Company subsidiaries, E.ON NA and LG&E Energy. Each of the Intermediate Companies also seeks authority to issue guarantees and other forms of credit support to or for the benefit of direct and indirect Intermediate Company subsidiaries, E.ON NA and LG&E Energy. In no case would the Intermediate Companies borrow, or receive any extension of credit or indemnity, from any of their respective direct or indirect subsidiary companies.

Upon consummation of the reorganization of the E.ON Group and the transfer of PUSIC to E.ON US, E.ON or one of the Intermediate Companies may be required to guarantee certain of the debt issued by the Powergen Financing Entities according to the terms of the applicable debt instruments. Applicants seek authority for the Intermediate Companies to issue guarantees and other forms of credit support to or for the benefit of the Powergen Financing Entities. Any guarantees issued by E.ON and the Intermediate Companies will count against the Guarantee Limit.

Each of the Intermediate Companies is intended to function as a financial conduit to facilitate E.ON's U.S. investments. For reasons of economic efficiency, the terms and conditions of any securities issued by the Intermediate Companies would be market-based determined under the Market Rate Method. The Intermediate Company financings would be used to finance the capital requirements of E.ON NA and the LG&E Energy Group and any exempt or subsequently authorized activity that is hereafter acquired. The Intermediate Company financing will not be used by the Intermediate Companies to carry on business or investment activities within the Intermediate Companies.

D. Hedging Transactions

The Intermediate Companies, the Powergen Intermediate Holding Companies and the Powergen Financing Entities propose to enter into hedging transactions with E.ON or other Intermediate Companies, Powergen Intermediate Holding Companies and Powergen Financing Entities to hedge interest rate or currency exposures. These transactions would be on market terms and on the same terms applicable to E.ON in section IV.D above.

VI. LG&E Energy Group Companies.

A. Loans from E.ON Group Companies

After the Acquisition, E.ON will restructure its holding in E.ON NA, a wholly owned subsidiary, so that it will be held as a direct subsidiary of PUSIC. After the restructuring, E.ON NA will be a sister company to LG&E Energy. E.ON NA owns Fidelia, a finance company subsidiary organized in Delaware. Applicants propose that funds held by Fidelia be used to finance the capital needs of the LG&E Energy Group.

E.ON proposes to finance all or a portion of the capital needs of the LG&E Energy Group companies directly or through other E.ON Group companies as described above, including the Intermediate Companies. Applicants request authority for the LG&E Energy Group companies to borrow funds from E.ON Group companies that may have available surplus funds. These borrowings would only occur if the interest rate on the loan would result in an equal or lower cost of borrowing than the LG&E Energy Group company could obtain in a loan from E.ON or in the capital markets on its own. Consequently, all borrowings by an LG&E Energy Group company from an associate company would be at the lowest of: (a) E.ON's effective cost of capital; (b) the lending associate's effective cost of capital (if lower than E.ON's effective cost of capital); and (c) the borrowing LG&E Energy Group company's effective cost of capital determined by reference to the effective cost of a direct borrowing by the company from a nonassociate for a comparable term loan that could be entered into at the time.

1. LG&E Energy

Applicants request authorization for LG&E Energy to obtain funds externally through sales of short-term debt securities and to have outstanding at any time during the Authorization Period external short-term debt in an aggregate amount of up to $400 million.

LG&E Energy may engage in short-term financing as it deems appropriate in light of its needs and market conditions at the time of issuance. Financing could include commercial paper sold in established U.S. or European commercial paper markets, lines of credit with banks or other financial institutions and debt securities issued under an indenture or a note program. All transactions will be at rates or prices, and under conditions, negotiated under, based upon or otherwise determined by, competitive market conditions. Any securities issued by LG&E Energy will comply with the Financing Parameters.

2. Utility Subsidiaries

Applicants request authorization for the Utility Subsidiaries to undertake the following financings.

(a) Short-Term Financing. Applicants request authorization for LG&E and KU to issue debt with maturities of two years or less to one or more associate or nonassociate companies in an aggregate principal amount at any one time outstanding during the Authorization Period of up to $400 million in the case of LG&E and $400 million in the case of KU. Short-term financing may include commercial paper sold in established U.S. or European commercial paper markets, lines of credit with banks or other financial institutions and debt securities issued under an indenture or a note program. All transactions will be at rates or prices, and under conditions negotiated under, based upon, or

otherwise determined by, competitive market conditions.

(b) Receivables Factoring Program. LG&E and KU propose to continue their receivables factoring program, authorized by the Powergen Order. LG&E formed and made capital contributions to LG&E Receivables, LLC (''LG&E Receivables'') and KU has formed and made capital contributions to KU Receivables, LLC (''KU Receivables''). Applicants request authorization for LG&E Receivables and KU Receivables to pay dividends or other distributions to the extent the dividends or other distributions may be considered to be paid out of capital or unearned surplus. Applicants also request that the Commission authorize the intercompany notes issued by LG&E Receivables and KU Receivables to LG&E and KU, respectively.

(c) Guarantees. The Utility Subsidiaries seek authorization to guarantee the obligations of their subsidiaries (other than EWGs, exempt telecommunications companies as defined under section 34 of the Act (''ETCs'') or FUCOs) to the extent not exempt under rule 45 under the Act. Guarantees would not exceed $200 million in the case of LG&E and $200 million in the case of KU. Certain guarantees may be in support of obligations that are not capable of exact quantification. The Utility Subsidiaries will in these cases determine the exposure under a guarantee for purposes of measuring compliance with the above limits by appropriate means including estimation of exposure based on loss experience or projected potential payment amounts. The Utility Subsidiaries propose to charge each subsidiary a fee for each guarantee provided on its behalf that is not greater than the cost, if any, of the liquidity necessary to perform the guarantee and the credit risk assumed by the Utility Subsidiary. Guarantees issued by the Utility Subsidiaries would not be secured by any utility assets.

(d) Hedging Instruments. The Utility Subsidiaries request authorization to enter into Hedging Instruments and Anticipatory Hedges on the same terms applicable to E.ON in section IV.D above.

3. Intercompany Loans Among the LG&E Energy Group

The activities of LG&E Energy and its nonutility subsidiaries (''Nonutility Subsidiaries'') are financed, in part, through intercompany loans. The source of funds for the operations of LG&E Energy and the Nonutility Subsidiaries include internally generated funds and proceeds of external financings.

Applicants request authorization for LG&E Energy and the Nonutility Subsidiaries to loan funds to the Nonutility Subsidiaries in a net principal amount at any one time outstanding during the Authorization Period not to exceed $1 billion. The authorization for intrasystem financing requested in this paragraph excludes financing that is exempt under rules 45(b) and 52. LG&E Energy will not borrow funds from its subsidiary companies. Terms and conditions of intercompany loans available to the Nonutility Subsidiaries will be materially no less favorable than the terms and conditions of loans available to the borrowing company from third-party lenders. The interest rate on intercompany loans payable by the borrower will be equal to the lending company's cost of capital. All intercompany loans will be payable on demand or have a maturity of less than fifty years from the date of issuance.

4. LG&E Energy Group Guarantees

The LG&E Energy Group has in place certain guarantees and other credit support arrangements and request authority for these arrangements to remain in place following the Acquisition. These guarantees and credit support arrangements, described fully in the Application, have been previously authorized by order or are permitted under the Act and rules under the Act.

Applicants request authorization for LG&E Energy and the Nonutility Subsidiaries to enter into guarantees, extend credit, obtain letters of credit, enter into guaranty-type expense agreements and otherwise to provide credit support for the obligations from time to time of the LG&E Energy Group companies during the Authorization Period. Guarantees issued by LG&E Energy would not exceed an aggregate principal amount of $1.5 billion and Guarantees issued by the Nonutility Subsidiaries would not exceed an additional aggregate principal amount of $1.5 billion, in each case based on the amount at risk, outstanding at any one time, exclusive of any guarantees or credit support arrangements existing on the date of the Acquisition and exclusive of guarantees that may be exempt under rule 45(b). The request for Guarantee authorization is separate from E.ON's External Financing Limit or E.ON's Guarantee Limit and is also separate from the guarantee authorization sought by the Utility Subsidiaries. Any securities issued by the LG&E Energy Group companies which are guaranteed or otherwise covered by credit support arrangements, will either be issued pursuant to a Commission order or under an applicable exemption under the Act.

Any Guarantees or other credit support arrangements outstanding at the end of the Authorization Period shall continue until expiration or termination in accordance with their terms. The amount of Guarantees outstanding at any one time shall not be counted against the aggregate respective limits applicable to external financings or the limits on intra-system financing requested elsewhere herein. The guarantor will not charge a fee for any Guarantee that would exceed the guarantor's cost of obtaining the liquidity necessary to perform the Guarantee for the period of time the Guarantee remains outstanding and the credit risk assumed by the guarantor. To the extent that the exposure under any Guarantee is not capable of exact quantification, the guarantor will estimate its exposure based on loss experience or projected potential payment amounts.

5. Money Pools

Applicants request authorization to operate three money pools. The utility money pool (''Utility Money Pool'') would include only the Utility Subsidiaries as borrowers from, and lenders to, the pool. E.ON, E.ON NA, Fidelia and LG&E Energy may be additional members of the Utility Money Pool, but they would participate only as lenders to the pool. LG&E Energy Services Inc. (''LG&E Services'') will act as the administrator of the Utility Money Pool.

The U.S. nonutility money pool (''U.S. Nonutility Money Pool'') would include the Nonutility Subsidiaries as borrowers from and lenders to the pool. E.ON, E.ON NA, Fidelia and LG&E Energy would be additional members of the U.S. Nonutility Money Pool, but they would participate only as lenders to the pool. LG&E Services, the service company subsidiary of LG&E Energy, will act as the administrator of the U.S. Nonutility Money Pool.

The Utility Subsidiaries and certain of the Nonutility Subsidiaries currently participate in money pools approved by the Commission in the Powergen Order. Applicants request that the Commission authorize the existing money pools through December 31, 2003, to provide a period of time to implement the new money pools.

Applicants also request authorization to form and operate an E.ON nonutility money pool (''E.ON Nonutility Money Pool'') on the terms described herein. The E.ON Nonutility Money Pool may include all E.ON Group companies as

borrowers from and lenders to the pool, except E.ON, the Intermediate Companies, the Powergen Intermediate Holding Companies and the LG&E Energy Group companies. E.ON, the Intermediate Companies and the Powergen Intermediate Holding Companies would participate only as lenders to the E.ON Nonutility Money Pool.

The daily outstanding balance of all borrowings from the Utility Money Pool during any month will accrue interest at the rate, as published in the Wall Street Journal on the last business day of the prior calendar month for high grade 30-day commercial paper issued by major corporations and sold through dealers (''WSJ Rate'') plus an at-cost allocation of LG&E Services'' cost of managing the money pool. The interest rate paid on loans to the Utility Money Pool would be the weighted average of the WSJ Rate earned on loans to pool participants and the interest rate earned by the pool on surplus deposits invested in high-quality short-term readily marketable instruments.

LG&E Services would administer the Utility Money Pool on an ''at cost'' basis and maintain the records for the pool. The determination of whether a participant in a money pool has surplus funds to lend to the pool or should borrow from the pool would be made by each participant's chief financial officer or treasurer, or by a designee thereof, on the basis of cash flow projections and other relevant factors, in that participant's sole discretion. No party would be required to effect a borrowing through a money pool if it is determined that it could (and had the authority to) effect a borrowing at a lower cost directly from banks or through the sale of its own commercial paper.

The Utility Subsidiaries' borrowings from the Utility Money Pool would be counted against their overall short-term borrowing limits stated above. The U.S. Nonutility Money Pool will be operated on substantially the same terms and conditions as the Utility Money Pool.

The E.ON Nonutility Money Pool would be administered by E.ON at no charge or by E.ON NA or its special purpose subsidiary at cost. The interest rate charged by the pool would be set according to the Market Rate Method and surplus funds would be invested in the same manner proposed for the Utility Money Pool. The interest rate paid on deposits to the E.ON Nonutility Money Pool will be a weighted average of the rates charged borrowers and the money pool investment rate.

VII. Acquisition, Redemption, or Retirement of Securities

The Applicants request authorization for each company in the E.ON Group other than EWGs, FUCOs, and ETCs to acquire, redeem, or retire its securities or those of its direct and indirect subsidiaries, which securities may be either outstanding presently or issued and sold in the future from time to time during the Authorization Period. These transactions will be undertaken at either the competitive market prices for the securities or at the stated price for those securities, as applicable.

VIII. Financing Entities

Applicants request authorization for the E.ON Group companies, except the EWGs, FUCOs and ETCs, to organize new, or use existing, corporations, trusts, partnerships, or other entities created for the purpose of facilitating financings through their issuance to third parties of income preferred securities or other securities authorized or issued under an applicable exemption. Request is also made for these financing entities (''E.ON Financing Entities'') to issue these securities to third parties in the event the issuances are not exempt under rule 52. Additionally, Applicants request authorization with respect to (a) the issuance of debentures or other evidences of indebtedness to an E.ON Financing Entity in return for the proceeds of the financing; (b) the acquisition of voting interests or equity securities issued by the E.ON Financing Entity to establish ownership of or to return funds to the financing entity and (c) the guarantee of the E.ON Financing Entity's obligations in connection with the securities issued. Applicants also request authority for E.ON Group Companies to enter into expense agreements with their respective E.ON Financing Entity under section 13 of the Act and to pay all expenses of the entity. All expense reimbursements would be at cost.

Any amounts issued by an E.ON Financing Entity to third parties under the authority requested in this Application would be counted against the External Financing Limit or any other applicable limit for the immediate parent of the E.ON Financing Entity. The underlying intra-system mirror debt and parent guarantee will not, however, count against the applicable financing or guarantee limits.

IX. Changes in Capital Stock of Subsidiaries

The portion of a subsidiary's aggregate financing to be effected through the sale of equity securities to a direct or indirect parent company during the Authorization Period cannot be determined at this time. The proposed sale of capital securities may in some cases exceed the capital stock of a given subsidiary authorized at the date of the Merger, in which case the limit will be increased. In addition, a subsidiary may choose to use other forms of capital securities including common stock, ordinary shares, preferred stock, other preferred securities, options and/or warrants convertible into common or preferred stock rights and similar securities. Applicants request authority to increase the amount or change the terms of any wholly owned subsidiary's authorized capital securities, as needed to accommodate the sale of additional equity, without additional Commission approval. The terms that may be changed include dividend rates, conversion rates and dates, and expiration dates. Applicants state that the Financing Parameters will continue to be satisfied following the change in terms of any capital security issued by a subsidiary.

X. Tax Allocation Agreement

Applicants ask the Commission to approve the agreement among certain E.ON Group companies to file a consolidated tax return (''Tax Allocation Agreement''). Approval is necessary because the Tax Allocation Agreement provides for the retention by the U.S. parent of the US tax filing group (i.e., PUSIC or certain of its subsidiaries) of certain tax attributes resulting from payments it has made, rather than the allocation of these losses to the subsidiaries in the U.S. tax filing group without compensation as would otherwise be required by rule 45(c)(5). In this matter, PUSIC is seeking to retain only the benefit of tax losses that have been generated by it in connection with financing the acquisition of LG&E Energy.

XI. Payment of Dividends Out of Capital or Unearned Surplus

Applicants will use the purchase method of accounting for the Acquisition. Under this method of accounting, the premium to be paid to acquire Powergen will result in a substantial amount of goodwill for the E.ON Group. Goodwill will not be amortized but will be subject to annual impairment tests and will reduce future consolidated net income. In addition, accounting rules require that the premium paid in an acquisition utilizing the purchase method of accounting be ''pushed down'' to the books of the acquired company, which

in this case would be the Powergen Group. The effect of a ''push down'' is to eliminate the retained earnings of the acquired company and to increase its additional paid-in capital. However, under applicable exceptions to the general rule, the premium paid in the acquisition will be ''pushed down'' to LG&E Energy, but will not be pushed down to the Utility Subsidiaries or any other subsidiary of LG&E Energy.

Applicants request authorization for the E.ON subsidiaries other than EWGs, FUCOs, ETCs, and Utility Subsidiaries, to pay dividends with respect to its common stock or fund the redemption or repurchase of stock out of capital and unearned surplus (including revaluation reserve), to the extent permitted under applicable corporate law from time to time through the Authorization Period.

XII. Nonutility Reorganizations

Applicants propose to restructure E.ON's nonutility holdings, including those in the LG&E Energy Group, from time to time as may be necessary or appropriate in the furtherance of the E.ON Group's authorized nonutility activities and to maintain and support investment in the E.ON TBD Subsidiaries pending divestiture. To that end, E.ON requests authorization to acquire, directly or indirectly, the equity securities of one or more intermediate subsidiaries (''Development Subsidiaries'') organized exclusively for the purpose of acquiring, financing, and holding the securities of one or more existing or future nonutility subsidiaries. Development Subsidiaries may also provide management, administrative, project development and operating services to these entities.

Restructuring could involve the acquisition of one or more new special-purpose subsidiaries to acquire and hold direct or indirect interests in any or all of the TBD Subsidiaries and the E.ON Group's existing or future authorized nonutility businesses. Restructuring could also involve the transfer of existing subsidiaries, or portions of existing businesses, among the E.ON Group companies and/or the reincorporation of existing subsidiaries in a different jurisdiction. This would enable the E.ON Group to consolidate similar businesses, to participate effectively in authorized nonutility activities, and to position the E.ON TBD Subsidiaries appropriately for eventual sale without the need to apply for or receive additional Commission approval.

The nonutility restructuring authorization sought herein works together with the authorization to invest up to $5.5 billion in the TBD Subsidiaries. For example, E.ON's German subsidiary Viterra has a portfolio of primarily low-income housing properties. To put Viterra in a better position to be sold, it may be desirable to package certain existing properties into one or more corporations for a separate sale and also to acquire selected commercial or upscale residential properties that complement Viterra's existing holdings. A more balanced portfolio of properties may be more attractive to a potential purchaser and increase the likelihood of structuring a successful sale.

Development Subsidiaries may be corporations, partnerships, limited liability companies or other entities in which E.ON, directly or indirectly, might have a 100% interest, a majority equity or debt position, or a minority debt or equity position. Development Subsidiaries would engage only in businesses to the extent the E.ON Group is authorized, whether by statute, rule, regulation or order, to engage in those businesses (including the businesses of the E.ON TBD Subsidiaries pending divestiture). E.ON commits that the reorganization authorization requested in this Application will not result in the entry by the E.ON Group into a new, unauthorized line of business.

Development Subsidiaries would be organized for the purpose of acquiring, holding and/or financing the acquisition of the securities of or other interest in one or more EWGs, FUCOs, subsidiaries exempt under rule 58 (''Rule 58 Subsidiaries''), energy related subsidiaries (''Energy Related Subsidiaries''), ETCs or other non-exempt nonutility subsidiaries. Development Subsidiaries may also engage in development activities (''Development Activities'') and administrative activities (''Administrative Activities'') relating to the permitted businesses of the nonutility subsidiaries.

Development Activities will include due diligence and design review; market studies; preliminary engineering; site inspection; preparation of bid proposals, including, in connection therewith, posting of bid bonds; application for required permits and/or regulatory approvals; acquisition of site options and options on other necessary rights; negotiation and execution of contractual commitments with owners of existing facilities, equipment vendors, construction firms, power purchasers, thermal ''hosts,'' fuel suppliers and other project contractors; negotiation of financing commitments with lenders and other third-party investors; and such other preliminary activities as may be required in connection with the purchase, acquisition, financing or construction of facilities or the acquisition of securities of or interests in new businesses. Administrative Activities will include ongoing personnel, accounting, engineering, legal, financial and other support activities necessary to manage E.ON's investments in nonutility subsidiaries.

A Development Subsidiary may be organized, among other things, (a) to facilitate the making of bids or proposals to develop or acquire an interest in any EWG, FUCO, Rule 58 Subsidiary, Energy Related Subsidiary, ETC or other non-exempt nonutility subsidiary; (b) after the award of the bid proposal, to facilitate closing on the purchase or financing of the acquired company; (c) at any time subsequent to the consummation of an acquisition of an interest in any company in order, among other things, to effect an adjustment in the respective ownership interests in business held by E.ON and non-affiliated investors; (d) to facilitate the sale of ownership interests in one or more acquired nonutility companies; (e) to comply with applicable laws of foreign jurisdictions limiting or otherwise relating to the ownership of domestic companies by foreign nationals; (f) as a part of financial optimization or tax planning to limit E.ON's exposure to German, U.S. and foreign taxes or (g) to further insulate E.ON and its utility subsidiaries from operational or other business risks that may be associated with investments in nonutility companies.

Development Activities will be funded in accordance with rules 45(b) and 52(b) under the Act or as authorized in this Application. To the extent that E.ON provides funds or guarantees directly or indirectly to a Development Subsidiary that are used for the purpose of making an investment in any EWG, FUCO or Rule 58 Subsidiary, the amount of these funds or guarantees will be included in E.ON's ''aggregate investment'' in these entities, as calculated in accordance with rules 53 or 58, under the Act as applicable.

To the extent these transactions are not exempt from the Act or otherwise authorized or permitted by rule, regulation or order of the Commission, Applicants request that authorization for the Development Subsidiaries to provide management, administrative, project development and operating services to direct or indirect subsidiaries at cost in accordance with section 13 of the Act and the rules, including rules 90 and 91 under the Act. Applicants also propose, however, that under certain circumstances Development Subsidiaries would provide services and

sell goods at fair market prices, under an exemption from the at-cost standard of section 13(b) of the Act and rules 90 and 91 under the Act, when the company receiving the goods or services is:

(1) A FUCO or foreign EWG that does not derive any income, directly or indirectly, from the generation, transmission or distribution of electric energy for sale within the United States;

(2) An EWG that sells electricity to nonassociate companies at market-based rates approved by the Federal Energy Regulatory Commission (''FERC'');

(3) A ''qualifying facility'' under the Public Utility Regulatory Policy Act of 1978 (''PURPA'') that sells electricity to industrial or commercial customers for their own use at negotiated prices or to electric utility companies at their ''avoided cost,'' as defined under PURPA;

(4) A domestic EWG or ''qualifying facility'' that sells electricity to nonassociate companies at cost-based rates approved by FERC or a state commission; and

(5) A Rule 58 Subsidiary or any other authorized subsidiary that: (a) Is partially owned, provided that the ultimate purchaser of the goods or services is not an associate public utility company or an associate company that primarily provides goods and services to associate public-utility companies; (b) is engaged solely in the business of developing, owning, operating and/or providing goods and services to nonutility companies described in items (1) through (4), above or (c) does not derive, directly or indirectly, any material part of its income from sources within the United States and is not a public-utility company operating within the United States.

XIII. Energy Related Subsidiaries

E.ON is in the process of a significant program of divestiture of its nonutility businesses. E.ON expects to receive proceeds from business divestitures in excess of $20 billion within the next five years, including the proceeds of sales already made. Applicants propose that E.ON invest the divestiture proceeds to build its existing, permitted nonutility businesses, and acquire additional interests in EWGs, FUCOs and permitted nonutility businesses located primarily outside of the United States.

XIV. EWG/FUCO-Related Financings

E.ON requests authorization to issue and sell securities in an aggregate amount of up to $25 billion for the purpose of financing investments in EWGs and FUCOs in the Acquisition Application. E.ON also proposes to invest an additional $35 billion in EWGs and FUCOs available from the divestiture of the TBD Subsidiaries. Both of these amounts are included within the External Financing Limit.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6551 Filed 3–18–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25461; 812–10806]

Putnam American Government Income Fund, *et al.*; Notice of Application

March 13, 2002.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 18(f) and 21(b) of the Act, under section 12(d)(1)(J) of the Act for an exemption from section 12(d)(1) of the Act, under sections 6(c) and 17(b) for an exemption from sections 17(a)(1) and 17(a)(3) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

Summary of Application: Applicants request an order that would permit certain registered investment companies to participate in a joint lending and borrowing facility.

Applicants: Putnam American Government Income Fund, Putnam Arizona Tax Exempt Income Fund, Putnam Asia Pacific Growth Fund, Putnam Asset Allocation Funds (on behalf of its portfolio series: Putnam Asset Allocation: Growth Portfolio, Putnam Asset Allocation: Balanced Portfolio and Putnam Asset Allocation: Conservative Portfolio), Putnam Balanced Retirement Fund, Putnam California Tax Exempt Income Fund, Putnam California Tax Exempt Money Market Fund, Putnam Capital Appreciation Fund, Putnam Classic Equity Fund, Putnam Convertible Income-Growth Trust, Putnam Diversified Income Trust, Putnam Equity Income Fund, Putnam Europe Growth Fund, Putnam Florida Tax Exempt Income Fund, The Putnam Fund for Growth and Income, Putnam Funds Trust (on behalf of is portfolio series: Putnam Asia Pacific Fund II, Putnam Equity Fund 98, Putnam Equity Fund 2000, Putnam Financial Services Fund, Putnam Growth Fund, Putnam High Yield Trust II, Putnam International Fund 2000, Putnam International Growth and Income Fund, Putnam International Core Fund, Putnam Mid Cap Fund 2000, Putnam New Century Growth Fund, Putnam Technology Fund and Putnam U.S. Core Fund), The George Putnam Fund of Boston, Putnam Global Equity Fund, Putnam Global Governmental Income Trust, Putnam Global Growth Fund, Putnam Global Natural Resources Fund, Putnam Health Sciences Trust, Putnam High Yield Advantage Fund, Putnam High Yield Trust, Putnam Income Fund, Putnam Intermediate U.S. Government Income Fund, Putnam International Growth Fund, Putnam Investment Funds (on behalf of its portfolio series: Putnam Balanced Fund, Putnam Capital Opportunities Fund, Putnam Emerging Markets Fund, Putnam Global Aggressive Growth Fund, Putnam Global Growth and Income Fund, Putnam Growth Opportunities Fund, Putnam International Fund, Putnam International Blend Fund, Putnam International Large Cap Growth Fund, Putnam International New Opportunities Fund, Putnam International Voyager Fund, Putnam Mid-Cap Value Fund, Putnam New Value Fund, Putnam Research Fund and Putnam Small Cap Value Fund), Putnam Investors Fund, Putnam Massachusetts Tax Exempt Income Fund, Putnam Michigan Tax Exempt Income Fund, Putnam Minnesota Tax Exempt Income Fund, Putnam Money Market Fund, Putnam Municipal Income Fund, Putnam New Jersey Tax Exempt Income Fund, Putnam New Opportunities Fund, Putnam New York Tax Exempt Income Fund, Putnam New York Tax Exempt Money Market Fund, Putnam New York Tax Exempt Opportunities Fund, Putnam Ohio Tax Exempt Income Fund, Putnam OTC & Emerging Growth Fund, Putnam Pennsylvania Tax Exempt Income Fund, Putnam Preferred Income Fund, Putnam Strategic Income Fund, Putnam Tax Exempt Income Fund, Putnam Tax Exempt Money Market Fund, Putnam Tax-Free Income Trust (on behalf of its portfolio series: Putnam Tax-Free High Yield Fund and Putnam Tax-Free Insured Fund), Putnam Tax Smart Funds Trust (on behalf of its portfolio series: Putnam Tax Smart Equity Fund), Putnam U.S. Government Income Trust, Putnam Utilities Growth and Income Fund, Putnam Variable Trust (on behalf of its portfolio series: Putnam VT American Government Income Fund, Putnam VT Asia Pacific Growth Fund, Putnam VT Capital

Appreciation Fund, Putnam VT Diversified Income Fund, Putnam VT The George Putnam Fund of Boston, Putnam VT Global Asset Allocation Fund, Putnam VT Global Growth Fund, Putnam VT Growth and Income Fund, Putnam VT Growth Opportunities Fund, Putnam VT Health Sciences Fund, Putnam VT High Yield Fund, Putnam VT Income Fund, Putnam VT International Growth Fund, Putnam VT International Growth and Income Fund, Putnam VT International New Opportunities Fund, Putnam VT Investors Fund, Putnam VT Money Market Fund, Putnam VT New Opportunities Fund, Putnam VT New Value Fund, Putnam VT OTC & Emerging Growth Fund, Putnam VT Research Fund, Putnam VT Small Cap Value Fund, Putnam VT Technology Fund, Putnam VT Utilities Growth and Income Fund, Putnam VT Vista Fund, Putnam VT Voyager Fund and Putnam VT Voyager Fund II), Putnam Vista Fund, Putnam Voyager Fund, Putnam Voyager Fund II, Putnam California Investment Grade Municipal Trust, Putnam Convertible Opportunities and Income Trust, Putnam High Income Convertible and Bond Fund, Putnam High Yield Municipal Trust, Putnam Investment Grade Municipal Trust, Putnam Managed High Yield Trust, Putnam Managed Municipal Income Trust, Putnam Master Income Trust, Putnam Master Intermediate Income Trust, Putnam Municipal Bond Fund, Putnam Municipal Opportunities Trust, Putnam New York Investment Grade Municipal Trust, Putnam Premier Income Trust, Putnam Tax-Free Health Care Fund (collectively, the ''Funds''), and Putnam Investment Management, LLC (the ''Adviser'').

Filing Dates: The application was filed on October 6, 1997 and amended on February 26, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 8, 2002 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, c/o John R. Verani, Putnam Investment Management, LLC, One Post Office Square, Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: Karen L. Goldstein, Senior Counsel, at (202) 942–0646, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549 (tel. 202–942–8090).

Applicants' Representations

1. The Funds, each a Massachusetts business trust, are registered under the Act as open-end or closed-end management investment companies (referred to as ''Open-end Funds'' and ''Closed-end Funds,'' respectively). The Adviser, registered under the Investment Advisers Act of 1940, serves as the investment adviser for each Fund. The Adviser is a wholly-owned subsidiary of Putnam Investments, LLC, which is owned by Putnam Investments Trust, a subsidiary of Marsh & McLennan Companies, Inc. Applicants request that any relief granted pursuant to the application also apply to any other existing or future registered management investment companies, or series thereof, for which the Adviser or a company controlling, controlled by, or under common control with the Adviser, acts as investment adviser (''Future Funds'').[1]

2. Certain of the Open-end Funds have entered into a line of credit with a syndicate of banks (the ''Banks'') under which the Banks are obligated to lend money to the Open-end Funds for temporary or emergency purposes. In addition, certain of the Funds may lend money to the Banks or other parties by entering into repurchase agreements or purchasing other short-term instruments. When Open-end Funds borrow from the Banks, they pay a rate of interest significantly higher than the rate of interest earned by the Funds that have entered into repurchase agreements. The interest rate difference represents the Bank's profit for serving as ''middleman'' between borrowers and lenders.

3. The Funds seek to reduce the middleman function of the Banks by entering into a master loan agreement with each other (the ''Credit Facility'') that would permit the Funds to lend money directly to, and borrow from, each other to meet the temporary or emergency borrowing needs of the borrowing Open-end Funds (''Interfund Loans'').

4. Applicants state that the Credit Facility would reduce substantially an Open-end Fund's borrowing costs and to enhance a Fund's ability to earn higher rates of interest on its short-term lending. Although the Credit Facility would substantially reduce the Funds' reliance on bank credit arrangements, the Funds may continue to maintain bank loan facilities.

5. Applicants anticipate that the Credit Facility would provide a borrowing Open-end Fund with savings when the cash position of the Fund is insufficient to meet cash requirements. This situation typically arises when shareholder redemptions exceed anticipated volumes and the Open-end Fund has insufficient cash on hand to satisfy the redemptions. Although all transactions are required to be settled within three business days, the Open-end Fund may require a source of immediate, short-term liquidity to meet redemption requests pending settlement of the sale of portfolio securities.

6. Although bank borrowings are available to provide liquidity, the rate charged under the Credit Facility will be below that charged by commercial lenders for short-term loans. Likewise, a Fund making a cash loan directly to another Fund would earn interest at a rate higher than it otherwise could obtain from investing its cash in short-term repurchase agreements. Thus, applicants believe that the Credit Facility would benefit both those Funds that are borrowers and those that are lenders.

7. The interest rate to be charged on Interfund Loans (the ''Interfund Rate'') would be determined daily and would generally be the average of (i) the higher of the ''OTD Rate'' and the ''Repo Rate'' and (ii) the ''Bank Loan Rate'' (each as defined below). The OTD Rate on any day would be the highest interest rate available to the Funds from investment in overnight time deposits. The Repo Rate on any day would be the highest interest rate available to the Funds from investment in overnight repurchase agreements. The Bank Loan Rate for any day would be calculated according to a formula, established by the board of trustees of each Fund (''Board''),

[1] All existing investment companies that presently intend to rely on the order are named as applicants. Any Future Funds that subsequently rely on the order will comply with the terms and conditions in the application.

intended to approximate the lowest interest rate at which short-term bank loans are available to the Funds. The formula would be based upon a publicly available rate (*e.g.,* Federal Funds rate plus 25 basis points) and would vary with that rate to reflect changing bank loan rates. The initial formula and any subsequent modifications would be subject to the approval of the Board of each Fund. In addition, each Fund's Board periodically would review the continuing appropriateness of reliance on the publicly available rate used to determine the Bank Loan Rate, as well as the relationship between the Bank Loan Rate and current bank loan rates available to the Funds.

8. The Adviser would administer the Credit Facility as part of its duties under its investment management agreement with each Fund and would receive no additional fee as compensation for its services. The Adviser will make an Interfund Loan available to a borrowing Fund only if the Interfund Rate is more favorable to the lending Fund than both the Repo Rate and the OTD Rate and more favorable to the borrowing Fund than the Bank Loan Rate. Closed-end Funds and money market Funds will participate in the Credit Facility only as lending Funds.

9. On each business day the Adviser would collect data on the uninvested cash balances and borrowing requirements of all participating Funds. The Adviser would allocate borrowing demand and cash available for lending among the Funds on a basis believed by it to be equitable, subject to certain administrative procedures applicable to all Funds, such as the time a decision is made that a particular Fund would participate, minimum loan sizes, and the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each single Interfund Loan may be allocated to minimize the number of participants necessary to complete that Interfund Loan transaction. No Fund would be able to direct that its cash balance be loaned to any particular Fund or otherwise intervene in the Adviser's allocation of Interfund Loans. After allocating cash for Interfund Loans, the Adviser would invest any remaining cash in accordance with the investment guidelines of the Funds. The method of allocation and related administrative procedures would be established by each Fund's Board, including a majority of independent trustees who are not interested persons of the Fund, as defined in section 2(a)(19) of the Act (''Independent Trustees''), to ensure that both borrowing and lending Funds participate on an equitable basis.

10. The Adviser would (i) monitor the interest rates charged and the other terms and conditions of the Interfund Loans, (ii) ensure compliance with each Fund's investment policies and limitations, (iii) ensure equitable treatment of each Fund, and (iv) make quarterly reports to the Board concerning any transactions by the Funds under the Credit Facility and the Interfund Loan Rates.

11. No Fund would be permitted to participate in the Credit Facility unless (i) it had fully disclosed all material information concerning the Credit Facility in its prospectus or statement of additional information, (ii) it had obtained necessary shareholder approval, and (iii) the Fund's participation in the Credit Facility was consistent with its investment policies and restrictions and its Agreement and Declaration of Trust.

12. In connection with the Credit Facility, applicants request an order under (i) section 6(c) of the Act granting relief from sections 18(f) and 21(b) of the Act; (ii) section 12(d)(1)(J) of the Act granting relief from section 12(d)(1) of the Act; (iii) sections 6(c) and 17(b) of the Act granting relief from sections 17(a)(1) and 17(a)(3) of the Act; and (iv) section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint transactions.

Applicants' Legal Analysis

1. Section 17(a)(3) generally prohibits any affiliated person, or affiliated person of an affiliated person, from borrowing money or other property from a registered investment company. Section 21(b) generally prohibits any registered management investment company from lending money or other property to any person if that person controls or is under common control with the company. Section 2(a)(3)(C) of the Act defines an ''affiliated person'' of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, the other person. Funds that are advised by the same entity are ''affiliated persons'' of each other under section 2(a)(3)(C) of the Act by reason of being under common control. Applicants state that the Funds may be under common control by virtue of having the same Adviser and substantially the same Board and officers and therefore, under sections 17(a)(3) and 21(b), would be prohibited from participating in the Credit Facility.

2. Section 6(c) of the Act provides that the Commission may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provisions of the Act, if and to the extent the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act provides that the Commission may exempt a transaction from the prohibitions of section 17(a) provided that the terms of the transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants contend that the Credit Facility is consistent with the overall purposes of sections 17(a)(3) and 21(b). These sections are intended to prevent a party with potential adverse interests to, and some influence over the investment decisions of, a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly benefit that party and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the proposed transactions do not raise such concerns because (i) the Adviser would administer the program as a disinterested fiduciary, (ii) the Interfund Loans would not involve a degree of risk greater than that of short-term repurchase agreements or comparable short-term instruments, (iii) the lending Fund would earn interest at a rate higher than it could obtain through similar other investments, and (iv) the borrowing Fund would pay interest at a rate no greater than otherwise available to it under its bank loan agreements, if any. Moreover, the proposed conditions would effectively preclude the possibility of any undue advantage.

4. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any securities or other property to the company. Section 12(d)(1) of the Act generally makes it unlawful for a registered investment company to purchase or otherwise acquire any security issued by any other investment company except in accordance with the limitations set forth in that section. Applicants state that the Credit Facility may be deemed to involve transactions

by affiliated persons of the Funds. Applicants also state that the obligation of a borrowing Fund to repay an Interfund Loan may constitute a security under sections 17(a)(1) and 12(d)(1). Section 12(d)(1)(J) of the Act permits the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from the provisions of section 12(d)(1), if and to the extent that the exemption is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b), and 12(d)(1) are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons set forth below.

5. Applicants submit that the Credit Facility does not involve the type of abuse at which section 12(d)(1) was directed. That section was intended to prevent the pyramiding of investment companies in order to avoid imposing on investors additional and duplicative costs and fees that are generated by multiple layers of investments. Applicants state that the entire purpose of the Credit Facility is to provide economic benefits for all participating Funds. Applicants state that there would be no duplicative costs or fees to the Funds or their shareholders, and that the Adviser would administer the Credit Facility under its existing agreements with the Funds and would not receive additional compensation for its services.

6. Section 18(f)(1) prohibits open-end investment companies from issuing any senior security except that a registered company may borrow from any bank so long as immediately after the borrowing there is asset coverage of at least 300% for all borrowings of the company. Under section 18(g) of the Act, the term ''senior security'' includes any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request exemptive relief from section 18(f)(1) to the limited extent necessary to implement the Credit Facility (because the lending Funds are not banks).

7. Applicants believe that granting relief under section 6(c) is appropriate because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of the Fund, including combined interfund and bank borrowings, have at least 300% asset coverage. Based on the conditions and safeguards described in the application, applicants also submit that to allow the Funds to borrow from other Funds under the Credit Facility is consistent with the purposes and policies of section 18(f)(1).

8. Section 17(d) and rule 17d–1 generally prohibit any affiliated person of a registered investment company, or affiliated person of an affiliated person, when acting as principal, from effecting any joint transaction in which the company participates unless the transaction is approved by the Commission. Rule 17d–1 provides that in passing upon applications for exemptive relief from section 17(d), the Commission will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is on a basis different from or less advantageous than that of other participating Funds.

9. Applicants submit that the purpose of section 17(d) is to avoid self-dealing between investment companies and insiders. Applicants believe that the credit facility is consistent with the provisions, policies and purposes of the Act in that it offers both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and fundamental investment limitations. Applicants therefore state that each Fund's participation in the Credit Facility will be on terms that are no different from or less advantageous than those of other participating Funds.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. The interest rates to be charged to the Funds under the Credit Facility will be the average of (i) the higher of the OTD Rate and the Repo Rate and (ii) the Bank Loan Rate.

2. The Adviser on each business day will compare the Bank Loan Rate with the Repo Rate and the OTD Rate and will make cash available for Interfund Loans only if the Interfund Rate is (i) more favorable to the lending Fund than both the Repo Rate and the OTD Rate and (ii) more favorable to the borrowing Fund than the Bank Loan Rate.

3. If a Fund has outstanding borrowings from any bank, then any Interfund Loans to the Fund (i) will be at an interest rate equal to or lower than any outstanding bank loan, (ii) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that required collateral, (iii) will have a maturity no longer than any outstanding bank loan (and in no event more than seven days) and (iv) will provide that if an event of default by the Fund occurs under any agreement evidencing an outstanding bank loan to the Fund, that event of default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the Interfund Loan. This event of default will entitle the lending Fund to call the Interfund Loan and exercise all rights with respect to the collateral, if any. Such call will be made if the lending bank or banks exercise their rights to call their loan under an agreement with the Fund.

4. A Fund may make an unsecured borrowing through the Credit Facility if its outstanding borrowings from all sources immediately after the borrowing total 10% or less of its total assets, provided that if the Fund has a secured loan outstanding from any other lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that required collateral. If a Fund's total outstanding borrowings immediately after an interfund borrowing would be greater than 10% of its total assets, the Fund may borrow through the Credit Facility only on a secured basis. A Fund could not borrow through the Credit Facility or from any other source if its total outstanding borrowings immediately after the interfund borrowing would be more than 33⅓% of its total assets.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value equal to at least 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding Interfund Loans exceed 10% of its total assets for any other reason (such as a decline in net asset value or shareholder redemptions), the Fund will within one business day thereafter (i) repay all of its outstanding Interfund Loans, (ii) reduce its outstanding indebtedness to 10% or less of its total assets or (iii) secure each outstanding Interfund Loan by a pledge of segregated collateral with a market value equal to at least 102% of the outstanding principal value of the loan until the Fund's total outstanding

borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition (5) will no longer be required. Until each Interfund Loan that is outstanding at a time that a Fund's total outstanding borrowings exceed 10% is repaid, or until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of the collateral to market each day and will pledge additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding Interfund Loan at a level equal to at least 102% of the outstanding principal value of the Interfund Loan.

6. No Fund may loan funds through the Credit Facility if the loan would cause its aggregate outstanding loans through the Credit Facility to exceed 15% of its current net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund shall not exceed 5% of the lending Fund's net assets.

8. The duration of the Interfund Loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition (8).

9. Unless the Fund has a policy that prevents it from borrowing for other than temporary or emergency purposes, the Fund's borrowings through the Credit Facility, as measured on the day the most recent Interfund Loan was made to that Fund, will not exceed the greater of 125% of the Fund's total net cash redemptions or 102% of sales fails, in each case, for the preceding seven calendar days.

10. Each Interfund Loan may be called on one business day's notice by the lending Fund and may be repaid on any day by the borrowing Fund.

11. A Fund's participation in the Credit Facility must be consistent with its investment policies and limitations and the Fund's Agreement and Declaration of Trust.

12. The Adviser will calculate total Fund borrowing and lending demand through the Credit Facility, and allocate Interfund Loans on an equitable basis among Funds, without the intervention of the portfolio manager of any Fund. The Adviser will not solicit cash for the Credit Facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers. The Adviser will invest amounts remaining after satisfaction of borrowing demand in accordance with the investment guidelines of the Funds.

13. The Adviser will monitor the interest rates charged and the other terms and conditions of the Interfund Loans and will make a quarterly report to the Board of the Funds concerning the Funds' participation in the Credit Facility and the terms and other conditions of any extensions of credit under the Credit Facility.

14. Each Fund's Board, including a majority of the Independent Trustees: (i) Will review no less frequently than quarterly the Fund's participation in the Credit Facility during the preceding quarter for compliance with the conditions of any order permitting such transactions; (ii) will establish the Bank Loan Rate formula used to determine the interest rate on Interfund Loans, and review no less frequently than annually the continuing appropriateness of such Bank Loan Rate formula; and (iii) will review no less frequently than annually the continuing appropriateness of the Fund's participation in the Credit Facility.

15. If an Interfund Loan is not paid according to its terms and such default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the Interfund Loan Agreement, the Adviser promptly will refer such loan for arbitration to an independent arbitrator who has been selected by the Board of any Fund involved in the loan and who will serve as arbitrator of disputes concerning Interfund Loans.[2] The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit, at least annually, a written report to the Board of the Funds setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

16. Each Fund will maintain and preserve written records of all transactions under the Credit Facility, setting forth a description of the terms of the transaction, including the amount, the maturity and the rate of interest on the loan, the rate of interest available at the time on short-term repurchase agreements and commercial bank borrowings, and such other information presented to the Fund's Board in connection with the review required by conditions (13) and (14). These records will be maintained and preserved for a period of not less than six years from the end of the fiscal year in which any transaction involving the Fund occurred under the Credit Facility. For the first two years of this six-year period, the maintenance and preservation of these records will be in an easily accessible place.

17. The Adviser will prepare and submit to the Board for review an initial report describing the operations of the Credit Facility and the procedures to be implemented to ensure that all Funds are treated fairly. After the Credit Facility commences operations, the Adviser will report to the Board quarterly on the operations of the Credit Facility. In addition, for two years following the commencement of the Credit Facility, the independent public accountant for each Fund that is a registered investment company shall prepare an annual report that evaluates the Adviser's assertion that it has established procedures reasonably designed to achieve compliance with the conditions of the order. The report shall be prepared in accordance with the Statements on Standards for Attestation Engagements No. 3 and it shall be filed pursuant to Item 77Q3 of Form N–SAR. In particular, the report shall address procedures designed to achieve the following objectives: (i) That the Interfund Rate will be higher than both the Repo Rate and the OTD Rate but lower than the Bank Loan Rate; (ii) compliance with the collateral requirements described in the application; (iii) compliance with the percentage limitations on interfund borrowing and lending; (iv) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Board; and (v) that the interest rate on any Interfund Loan does not exceed the interest rate on any third party borrowings of a borrowing Fund at the time of the Interfund Loan.

After the final report is filed, the Fund's external auditors, in connection with their Fund audit examinations, will continue to review the operation of the Credit Facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

18. No Fund will participate in the Credit Facility upon receipt of requisite regulatory approval unless it has fully disclosed in its statement of additional information all material facts about its intended participation.

[2] If the dispute involves Funds with separate Boards, the Board of each Fund will select an independent arbitrator that is satisfactory to each Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6509 Filed 3–18–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25462; 812–12312]

Financial Investors Trust, et al.; Notice of Application

March 13, 2002.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under sections 6(c), 12(d)(1)(J), and 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 12(d)(1)(A) and (B) and 17(a) of the Act, and under section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint transactions.

SUMMARY OF APPLICATION: The requested order would permit certain registered management investment companies to invest uninvested cash and cash collateral in affiliated money market funds in excess of the limits in sections 12(d)(1)(A) and (B) of the Act.

Applicants: Armada Funds (''Armada''), The Armada Advantage Fund (''Armada Advantage''), Financial Investors Trust on behalf of The United Association S&P 500 Index Fund (''United Association'', and together with Armada and Armada Advantage, the ''Trusts'') and any registered open-end management investment company or series thereof that is currently, or in the future advised by National City Investment Management Company (''IMC'') or any entity controlling, controlled by, or under common control with IMC (together with IMC, the ''Adviser'')(collectively, the Trusts and their series, such investment companies and their series, the ''Funds.'')

Filing Dates: The application was filed on October 20, 2000, and amended on March 4, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 8, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609; Applicants, Armada, One Freedom Valley Drive, Oaks, PA 19456; Armada Advantage, One Freedom Valley Drive, Oaks, PA 19456; United Association S&P 550 Index Fund, PMB 606, 303 16th Street, Suite #016, Denver, CO 80202–5657; IMC, 1900 East Ninth Street, Cleveland, OH 44114.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574 or Nadya Roytblat, Assistant Director at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. Armada and Armada Advantage are Massachusetts business trusts registered under the Act as open-end management investment companies. Financial Investors Trusts is a Delaware business trust registered under the Act as an open-end management investment company. Collectively, the Trusts consist of 36 Funds.[1] The Funds, other than the money market Funds (''Money Market Funds''), invest in a variety of debt and/or equity securities in accordance with their respective investment objectives and policies. The Money Market Funds comply with rule 2a-7 under the Act. The Adviser is a wholly-owned subsidiary of National City Corporation, a publicly-held bank holding company, and is registered under the Investment Advisers Act of 1940 (the ''Advisers Act'').

2. Applicants state that certain Funds (''Investing Funds'') have, or may be expected to have, uninvested cash (''Uninvested Cash'') held by its custodian. Uninvested Cash may result from a variety of sources, including dividends or interest received on portfolio securities, unsettled securities transactions, reserves held for investment strategy purposes, scheduled maturity of investments, liquidation of investment securities to meet anticipated redemptions, dividend payments, or new monies received from investors. The Investing Funds also may participate in a securities lending program under which a Fund may lend its portfolio securities to registered broker-dealers or other institutional investors. The loans are continuously secured by collateral equal at all times to at least the market value of the securities loaned. Collateral for these loans may include cash (''Cash Collateral,'' and together with ''Uninvested Cash,'' ''Cash Balances''.)

3. Applicants request an order to permit each of the Investing Funds to invest its Cash Balances in one or more of the Money Market Funds, and to permit each of the Money Market Funds to sell its shares to, and redeem its shares from, the Investing Funds, and the Adviser to effect such purchases and sales. Investment of Cash Balances in shares of the Money Market Funds will be made only to the extent that such investments are consistent with each Investing Fund's investment objectives, restrictions, and policies as set forth in its prospectus and statement of additional information. Applicants believe that the proposed transactions may reduce transaction costs, create more liquidity, increase returns, and diversify holdings.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides, in pertinent part, that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act, in pertinent part, provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of section 12(d)(1) if, and to the extent

[1] Each Fund that currently intends to rely on the order has been named as an applicant. Another Fund that may rely on the order in the future will do so only in accordance with the terms and conditions of the application.

that, such exemption is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(J) from the limitations of section 12(d)(1)(A) and (B) to permit the Investing Funds to invest Cash Balances in the Money Market Funds.

3. Applicants state that the proposed arrangement would not result in the abuses that sections 12(d)(1)(A) and (B) were intended to prevent. Applicants state that because each Money Market Fund will maintain a highly liquid portfolio, an Investing Fund would not be in a position to gain undue influence over a Money Market Fund. Applicants represent that the proposed arrangement will not result in an inappropriate layering of fees because shares of the Money Market Funds sold to the Investment Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b-1 or service fee (as defined in rule 2830(b)(9) of the National Association of Securities Dealer's (''NASD'') Conduct Rules) or if such shares are subject to any such sales load, redemption fees, distribution fee or service fee, the Adviser will waive its advisory fee for each Investing Fund in an amount that offsets the amount of such fees incurred by the Investing Fund. Applicants state that if a Money Market Fund offers more than one class of shares, each Investing Fund will invest only in the class with the lowest expense ratio at the time of the investment. In connection with approving any advisory contract for an Investing Fund, the Investing Fund's board of trustees (the ''Board'') including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Disinterested Trustees''), will consider to what extent, if any, the advisory fees charged to the Investing Fund by the Adviser should be reduced to account for reduced services provided to the Investing Fund by the Adviser as a result of the investment of Uninvested Cash in the Money Market Funds. Applicants represent that no Money Market Fund will acquire securities of any other investment company in excess of the limitations contained in section 12(d)(1)(A) of the Act.

4. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3) of the Act, in pertinent part, defines an ''affiliated person'' of an investment company to include any person directly or indirectly controlling, controlled by, or under common control with the other person and any person owning, controlling, or holding with power to vote 5% or more of the other person. Applicants state that because the Funds share a common Adviser, each Fund may be deemed to be under common control with each of the other Funds, and thus an affiliated person of each of the other Funds. In addition, applicants state that because an Investing Fund may acquire 5% or more of a Money Market Fund, the Investing Fund may be deemed to be an affiliated person of the Money Market Fund. As a result, section 17(a) would prohibit the sale of shares of a Money Market Fund to the Investing Funds, and the redemption of shares by the Money Market Fund.

5. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt persons or transactions from any provision of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

6. Applicants submit that their request for relief to permit the purchase and redemption of shares of the Money Market Funds by the Investing Funds satisfies the standards in sections 6(c) and 17(b). Applicants note that shares of the Money Market Funds will be purchased and redeemed by the Investing Funds at their net asset value, the same consideration paid and received for these shares by any other shareholder. Applicants state that the Investing Funds will retain their ability to invest Cash Balances directly in money market instruments as authorized by their respective investment objectives and policies if they believe they can obtain a higher rate of return, or for any other reason. Applicants also state that a Money Market Fund has the right to discontinue selling shares to any of the Investing Funds if the Money Market Fund's Board determines that such sale would adversely affect its portfolio management and operations.

7. Section 17(d) of the Act and rule 17d-1 under the Act prohibit an affiliated person of a registered investment company, acting as a principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Applicants state that each Fund, by participating in the proposed transactions, and the Adviser, by effecting the proposed transactions, could be deemed to be participants in a joint enterprise or arrangement within the meaning of section 17(d) of the Act and rule 17d-1 under the Act.

8. Rule 17d-1 permits the Commission to approve a proposed joint transaction covered by the terms of section 17(d) of the Act. In determining whether to approve a transaction, the Commission is to consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which participation by the registered investment company is on a basis different from, or less advantageous than, that of other participants. Applicants submit that the investment by the Investing Funds in shares of the Money Market Funds would be indistinguishable from any other shareholder account maintained by the Money Market Fund and that the transactions will be consistent with the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Shares of the Money Market Funds sold to and redeemed by the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b-1 under the Act or service fee (as defined in rule 2830(b)(9) of the Rules of Conduct of the NASD) or if such shares are subject to any such sales load, redemption fee, distribution fee or service fee, the Adviser will waive its advisory fee for each Investing Fund in an amount that offsets the amount of such fees incurred by the Investing Fund.

2. Before the next meeting of the Board of an Investing Fund is held for purposes of voting on an advisory contract under section 15 of the Act, the Adviser to the Investing Fund will provide the Board with specific information regarding the approximate cost to the Adviser of, or portion of the advisory fee under the existing advisory contract attributable to, managing the Uninvested Cash of the Investing Fund that can be expected to be invested in the Money Market Funds. Before approving any advisory contract for an Investing Fund, the Board of the Investing Fund, including a majority of the Disinterested Trustees, shall consider to what extent, if any, the

advisory fees charged to the Investing Fund by the Adviser should be reduced to account for reduced services provided to the Investing Fund by the Adviser as a result of Uninvested Cash being invested in the Money Market Funds. The minute books of the Investing Fund will record fully the Board's consideration in approving the advisory contract, including the considerations referred to above.

3. Each of the Investing Funds will invest Uninvested Cash in, and hold shares of, the Money Market Funds only to the extent that the Investing Fund's aggregate investment of Uninvested Cash in the Money Market Funds does not exceed 25 percent of the Investing Fund's total assets. For purposes of this limitation, each Investing Fund and series thereof will be treated as a separate investment company.

4. Investment in shares of the Money Market Funds will be in accordance with each Investing Fund's respective investment restrictions, if any, and will be consistent with each Investing Fund's policies as set forth in its prospectus and statement of additional information.

5. Each Investing Fund and Money Market Fund that may rely on the requested order shall be advised by the Adviser.

6. So long as its shares are held by an Investing Fund no Money Market Fund shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

7. Before a Fund may participate in the securities lending program, a majority of the Board, including a majority of the Disinterested Trustees, will approve the Fund's participation in the securities lending program. The Board also will evaluate the securities lending arrangement and its results no less frequently than annually and determine that any investment of Cash Collateral in the Money Market Funds is in the best interest of the shareholders of the Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6550 Filed 3–18–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45548; File No. SR–GSCC–2002–02]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Alter Trade Data Submission Requirements for Netting and Comparison-Only Members

March 12, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 11, 2002, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

GSCC is proposing to amend its rules to alter trade data submission requirements for Netting and Comparison-Only members.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

GSCC is proposing to amend its rules to alter trade data submission requirements for both Netting[3] and Comparison-Only[4] members. Based on an analysis conducted by GSCC to discover the cause of lower-than-desired buy/sell comparison rates, GSCC has determined that changes to its trade submission requirements would boost GSCC's trade comparison rates and thereby should decrease risk exposure for members and should allow market participants to more effectively settle non-netting eligible trades outside GSCC.[5]

In the course of its analysis, GSCC discovered that while comparison rates for repo transactions approached 97 percent, comparison rates for buy/sell transactions were consistently lower at 95 percent. GSCC determined that there were four main reasons for this trend. First, many trades submitted to GSCC are not submitted as originally executed between members. Many trades are either ''bunched'' or ''broken down'' resulting in some trades not being compared.[6] While GSCC employs certain tolerances for required data fields in order to aid comparison, these trade scenarios fall outside of GSCC's par summarization tolerances.[7]

The second reason for uncompared trades is when GSCC members fail to notify GSCC of their intent to submit trades for Executing Firms.[8] GSCC keeps over 400 Executing Firms and their

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by GSCC.

[3] A Netting member is a member of GSCC that is a member of both the Comparison System and the Netting System. The Comparison System performs trade comparison which consists of the reporting, validating, and in some cases, matching by GSCC of the long and short sides of a securities trade, including a repo transaction, to ensure that the details of such trade are in agreement between the parties. Trade detail comparison is the first step in the clearance and settlement process for securities transactions. The Netting System is a system for aggregating and matching offsetting obligations resulting from trades, including repo transactions, submitted by or on behalf of netting members.

[4] A Comparison-Only Member is a member of GSCC that is a member only of the Comparison System.

[5] Comparison rates are derived by dividing the total number of buy/sell trades compared by the total number of buy/sell trades submitted.

[6] For example, Firm A submits one trade for $30 million, and Firm B ''breaks down'' the trade into three $10 million pieces. Alternatively, Firm A and Firm B may execute five separate trades each worth $10 million. Firm A submits each trade separately while Firm B ''bunches'' the five trades into one $50 million piece. In both of these examples, the trades will not be compared.

[7] GSCC, in the event of a mismatch of final money, has established trade tolerances which allow for differentials in trade values (or par summarization) submitted by members on each side of one transaction. For a trade to be compared, par summarization must be on a 2:1 or 2:2 ratio. For example, where Firm A submits a trade in one piece of $50 million, and Firm B submits two pieces of $25 million each, this transaction would fall within the 2:1 par summarization tolerance. If Firm A were to submit two pieces of $25 million and Firm B submitted two pieces of $20 million and $30 million, this would fall within GSCC's 2:2 par summarization tolerance. Assuming that the final money matches, both of these trades will be compared by GSCC.

[8] An Executing Firm is a firm that is not a member of GSCC whose trade data is submitted to GSCC by a GSCC member.

corresponding symbols on a master list which is available to all members. GSCC should be notified in advance of a member's intent to submit trade data on behalf of an Executing Firm so that the master list can be updated. However, member firms often fail to so notify GSCC, they submit trade data without the proper Executing Firm symbol, or they fail to submit Executing Firm data completely. These trades may show up in GSCC's systems as uncompared.

A third reason for uncompared trades is that GSCC does not currently require its members to submit to it all types of trade data. As a result, some firms do not submit trades that are executed and settled on the same day (cash trades) to GSCC for comparison. The fourth reason for uncompared trades occurs because Comparison-Only members, who do not settle their trades through GSCC, do not submit their trade data to GSCC on a consistent basis.

The proposed rule changes would increase comparison rates by effectively eliminating the situations described above. Specific proposed rules changes would apply to both buy-sell and repo transactions as follows:

(i) Each Comparison-Only member would be required to submit data to GSCC on all buy-sell or repo trades executed by such member with any other Comparison-Only or Netting member of GSCC.

(ii) Each Netting member would be required to submit data to GSCC on all buy-sell or repo trades executed by such member with any other Comparison-Only member.[9]

(iii) Each GSCC member would be required to submit data to GSCC on all trades with other GSCC members executed and settled on the same day.

(iv) Each GSCC member would be required to submit trade data exactly as executed, up to a $50 million dollar cap. Trades for over $50 million could be submitted in $50 million pieces with a ''tail'' for any remainder.[10]

(v) Each GSCC member would be required to inform GSCC of all Executing Firms on whose behalf they submit trade data for placement on GSCC's master list and to submit to GSCC all trades executed on behalf of an Executing Firm on GSCC's master list with the appropriate symbol. In addition, each GSCC member would be required to inform GSCC of those Executing Firms that should be deleted from the master list.

In the event that a member does not comply with the new trade submission rules, GSCC would be granted certain rights to enforce compliance. GSCC would have the right to: (a) Place the member on surveillance status; (b) increase the required Clearing Fund deposit of a member; and/or (c) notify the member's appropriate regulatory authority of its non-compliance with GSCC's rules. GSCC expects to submit a rule filing at a later date giving GSCC the authority to assess fees to members who do not comply with the trade data submission requirements outlined in these rules.

GSCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act[11] and the rules and regulations thereunder applicable to GSCC because it would improve GSCC's operational efficiency and thereby limit market exposure and risk for Netting members and thereby would enable members and market participants to more effectively settle non-netting eligible trades outside GSCC.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of GSCC.

All submissions should refer to File No. SR–GSCC–2002–02 and should be submitted by April 9, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6511 Filed 3–18–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45554; File No. SR–NASD–2001–97]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to the Elimination of Interval Delays in Nasdaq's SuperMontage System

March 13, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 2, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities

[9] GSCC Rule 11 already requires Netting members to submit all trade data for transactions with other Netting members.

[10] GSCC does not accept trade data for transactions over $50 million except for GCF Repo transactions.

[11] 15 U.S.C. 78q–1.

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On March 7, 2002, the Nasdaq filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 4710(b)(1)(D) to remove delays between executions across price levels in SuperMontage. Nasdaq will implement this rule change within 30 days after successful completion of SuperMontage user acceptance testing.

Proposed new language is *italicized*; proposed deletions are in [brackets].

* * * * *

4710. Participant Obligations in NNMS

(a) No Change

(b)(1)(A) through (b)(1)(C) No Change

[(D) Interval Delay—After the NNMS system has executed all Displayed Quotes/Orders and Reserve Size interest at a price level, the following will occur:

(i) If the NNMS system cannot execute in full all shares of a Non-Directed Order against the Displayed Quotes/Orders and Reserve Size interest at the initial price level and at price two minimum trading increments away, the system will pause for 5 seconds before accessing the interest at the next price level in the system; provided, however, that once the Non-Directed Order can be filled in full within two price levels, there will be no interval delay between price levels and the system will execute the remainder of order in full; or

(ii) If the Non-Directed Orders is specially designated by the entering market participant as a ''sweep order,'' the system will execute against all Displayed Quotes/Orders and Reserve Size at the initial price level and the two price levels being displayed in the Nasdaq Order Display Facility without pausing between the displayed price levels. Thereafter, the system will pause 5 seconds before moving to the next price level, until the Non-Directed Order is executed in full.

(iii) The interval delay described in this subparagraph may be modified upon Commission approval and appropriate notification to NNMS Participants.]

[E] *D* All entries in NNMS shall be made in accordance with the requirements set forth in the NNMS Users Guide, as published from time to time by Nasdaq.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of its ongoing preparation for the launch of SuperMontage,[4] Nasdaq is engaging in a continuing review of the system's functionality and rules with a view to constant improvement. As a result of this review, and in consultation with industry professionals, Nasdaq has determined to eliminate system delays between executions at different price levels in SuperMontage.[5]

Currently, the rules of the SuperMontage system provide for immediate executions of Non-Directed Orders across the best inside price and next two best trading increments away from that inside price. If a Non-Directed Order cannot be executed in full against the combined displayed and reserve size amounts at those three increments, the system will pause 5 seconds before moving to price increments further away. If during this delay, additional share amounts appear in the system at any of the previous three price increments, the system will immediately execute against those shares.[6]

In response to concerns raised by market participants about the increased potential for the queuing of orders caused by system delays between executions, Nasdaq has determined to eliminate all interval delays in the SuperMontage system. In Nasdaq's view, removal of all interval delays will result in improved price discovery and a smoother functioning market. In addition, elimination of interval delays between executions will make the operation of this aspect of SuperMontage consistent with Nasdaq's current SuperSOES automatic execution functionality that likewise has no such delays.[7]

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with section 15A(b)(6)[8] of the Act, in that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with person engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[3] *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated March 6, 2002 (''Amendment No. 1''). In Amendment No. 1, Nasdaq made some technical corrections to the proposed rule text and to the proposed rule change. In addition, Nasdaq added a footnote to clarify that the 5-second interval delay will be retained for odd-lot executions against the same market maker. Nasdaq further deleted sentences referring to ''sweep orders.'' Nasdaq explained that the concept is no longer a part of Nasdaq's future Order Display and Collector Facility (''NNMS'' or ''SuperMontage'') because with the removal of interval delays, all SuperMontage orders will have the ability to immediately execute across multiple price levels without delay between those price intervals if the terms of the order and quote/orders it interacts with will allow it.

[4] *See* Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001) (order approving SuperMontage).

[5] Nasdaq will retain the 5 second interval delay between odd-lot executions against the same market maker contained in NASD Rule 4710(e)(2)(E). *See* Amendment No. 1, *supra* note 3.

[6] SuperMontage also would have allowed sweep orders, which would have immediately executed an order against the three best prices in the system before pausing. Nasdaq explained that the concept is no longer a part of SuperMontage because with the removal of interval delays, all SuperMontage orders will have the ability to immediately execute across multiple price levels without delay between those price intervals if the terms of the order and quote/orders it interacts with will allow it. *See* Amendment No. 1, *supra* note 3.

[7] *See* Securities Exchange Act Release No. 44504 (July 2, 2001), 66 FR 36022 (July 10, 2001).

[8] 15 U.S.C. 78*o*–3(b)(6).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2001–97 and should be submitted by April 9, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6510 Filed 3–18–02; 8:45 am]

BILLING CODE 8010–01–P

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

Office of the Coordinator for Counterterrorism

[Public Notice 3947]

Designations of Terrorists and Terrorist Organizations Pursuant to Executive Order 13224 of September 23, 2001

AGENCY: Office of the Coordinator for Counterterrorism, State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the designation by the Secretary of State of foreign persons whose property and interests in property have been blocked pursuant to Executive Order 13224 of September 23, 2001. These designations comprise 8 individuals and 29 organizations determined to meet the criteria set forth under subsection 1(b) of Executive Order 13224.

DATES: These determinations were made by the Secretary of State on October 12, 2001, October 31, 2001, December 18, 2001, and December 31, 2001, in consultation with the Secretary of the Treasury and Attorney General.

FOR FURTHER INFORMATION CONTACT: Frederick W. Axelgard, Office of the Coordinator for Counterterrorism, Department of State; telephone: (202) 647–9892; fax: (202) 647–0221.

SUPPLEMENTARY INFORMATION:

Background

On September 23, 2001, President Bush issued Executive Order 13224 (the ''Order'') imposing economic sanctions on persons (defined as including individuals or entities) who, *inter alia,* commit, threaten to commit, or support certain acts of terrorism. In an annex to the Order, President Bush identified 12 individuals and 15 entities whose assets are blocked pursuant to the Order (66 FR 49079, September 25, 2001). The property and interests in property of an additional 33 individuals and 6 entities were blocked pursuant to determinations by the Secretary of State and the Secretary of the Treasury (effective October 12, 2001), referenced in a **Federal Register** Notice published by the Office of Foreign Assets Control, Department of the Treasury (66 FR 54404, October 26, 2001). Further determinations made by the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General, on November 7, 2001, and December 4, 2001, December 20, 2001, January 9, 2002, February 26, and March 11 are addressed in a separate notice published elsewhere in this issue of the **Federal Register**.

Pursuant to subsection 1(b) of the Order, the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, has determined to date that 8 foreign individuals and 29 foreign organizations have been determined to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States. The Secretary of State's determination that each of these individuals and organizations meets the criteria set forth under subsection 1(b) of the Order subjects each of these individuals and organizations to sanctions. 23 of the organizations determined on October 31, 2001 and December 18, 2001 to meet the criteria set forth under subsection 1(b) of the Order are also subject to sanctions imposed pursuant to their designation as a Foreign Terrorist Organization pursuant to section 219 of the Immigration and Nationality Act, as amended, 8 U.S.C. 1189.

Pursuant to the determination made by the Secretary of State under subsection 1(b) of the Order, all property and interests in property of any listed person that are in the United States, that come within the United States, or that come within the possession or control of United States persons, including their overseas branches, are blocked. All transactions or dealings by U.S. persons or within the United States in property or interests in property of any listed person are prohibited unless licensed by the Department of the Treasury's Office of Foreign Assets Control or exempted by statute.

The determinations of the Secretary of State were effective on October 12, 2001, October 31, 2001, December 18, 2001, and December 31, 2001.

In Section 10 of the Order, the President determined that because of the ability to transfer funds or assets instantaneously, prior notice to persons listed in the Annex to, or determined to be subject to, the Order who might have a constitutional presence in the United States, would render ineffectual the blocking and other measures authorized in the Order. The President therefore determined that for these measures to be effective in addressing the national emergency declared in the Order, no prior notification of a listing or determination pursuant to the Order need be provided to any person who might have a constitutional presence in the United States.

The property and interests of property of the following persons are blocked and may not be transferred, paid, exported,

withdrawn or otherwise dealt in except as authorized by regulations, orders, directives, rulings, instructions, licenses or otherwise:

Designations by the Secretary of State on October 12, 2001

ADBELKARIM HUSSEIN MOHAMMED AL-NASSER
AHMAD IBRAHIM AL-MUGHASSIL
ALI SAED BIN ALI EL-HOORIE
IBRAHIM SALIH MOHAMMED AL-YACOUB
ALI ATWA
HASAN IZZ-AL-DIN
IMAD FAYEZ MUGNIYAH
KHALID SHAIKH MOHAMMED

Designations by the Secretary of State on October 31, 2001

ABU NIDAL ORGANIZATION
- a.k.a. ANO;
- a.k.a. BLACK SEPTEMBER
- a.k.a. FATAH REVOLUTIONARY COUNCIL
- a.k.a. ARAB REVOLUTIONARY COUNCIL
- a.k.a. ARAB REVOLUTIONARY BRIGADES
- a.k.a. REVOLUTIONARY ORGANIZATION OF SOCIALIST MUSLIMS

AUM SHINRIKYO
- a.k.a. A.I.C. COMPREHENSIVE RESEARCH INSTITUTE
- a.k.a. A.I.C. SOGO KENKYUSHO
- a.k.a. ALEPH
- a.k.a. AUM SUPREME TRUTH

BASQUE FATHERLAND AND LIBERTY
- a.k.a. ETA
- a.k.a. EUZKADI TA ASKATASUNA

GAMA'A AL-ISLAMIYYA
- a.k.a. GI
- a.k.a. ISLAMIC GROUP
- a.k.a. IG
- a.k.a. AL-GAMA'AT
- a.k.a. ISLAMIC GAMA'A
- a.k.a. EGYPTIAN AL-GAMA'AT AL-ISLAMIYYA

HAMAS
- a.k.a. ISLAMIC RESISTANCE MOVEMENT
- a.k.a. HARAKAT AL-MUQAWAMA AL-ISLAMIYA
- a.k.a. STUDENTS OF AYYASH
- a.k.a. STUDENT OF THE ENGINEER
- a.k.a. YAHYA AYYASH UNITS
- a.k.a. IZZ AL-DIN AL-QASSIM BRIGADES
- a.k.a. IZZ AL-DIN AL-QASSIM FORCES
- a.k.a. IZZ AL-DIN AL-QASSIM BATTALIONS
- a.k.a. IZZ AL-DIN AL QASSAM BRIGADES
- a.k.a. IZZ AL-DIN AL QASSAM FORCES
- a.k.a. IZZ AL-DIN AL QASSAM BATTALIONS

HIZBALLAH
- a.k.a. PARTY OF GOD
- a.k.a. ISLAMIC JIHAD
- a.k.a. ISLAMIC JIHAD ORGANIZATION
- a.k.a. REVOLUTIONARY JUSTICE ORGANIZATION
- a.k.a. ORGANIZATION OF THE OPPRESSED ON EARTH
- a.k.a. ISLAMIC JIHAD FOR THE LIBERATION OF PALESTINE
- a.k.a. ORGANIZATION OF RIGHT AGAINST WRONG
- a.k.a. ANSAR ALLAH
- a.k.a. FOLLOWERS OF THE PROPHET MUHAMMED

KAHANE CHAI
- a.k.a. COMMITTEE FOR THE SAFETY OF THE ROADS
- a.k.a. DIKUY BOGDIM
- a.k.a. DOV
- a.k.a. FOREFRONT OF THE IDEA
- a.k.a. JUDEA POLICE
- a.k.a. KACH
- a.k.a. KAHANE LIVES
- a.k.a. KFAR TAPUAH FUND
- a.k.a. KOACH
- a.k.a. REPRESSION OF TRAITORS
- a.k.a. STATE OF JUDEA
- a.k.a. SWORD OF DAVID
- a.k.a. THE JUDEAN LEGION
- a.k.a. THE JUDEAN VOICE
- a.k.a. THE QOMEMIYUT MOVEMENT
- a.k.a. THE WAY OF THE TORAH
- a.k.a. THE YESHIVA OF THE JEWISH IDEA

KURDISTAN WORKERS' PARTY
- a.k.a. HALU MESRU SAVUNMA KUVVETI (HSK)
- a.k.a. PARTIYA KARKERAN KURDISTAN
- a.k.a. PKK
- a.k.a. THE PEOPLE'S DEFENSE FORCE

LIBERATION TIGERS OF TAMIL EELAM
- a.k.a. LTTE
- a.k.a. TAMIL TIGERS
- a.k.a. ELLALAN FORCE

MUJAHEDIN-E KHALQ
- a.k.a. MUJAHEDIN-E KHALQ ORGANIZATION
- a.k.a. MEK
- a.k.a. MKO
- a.k.a. NLA
- a.k.a. ORGANIZATION OF THE PEOPLE'S HOLY WARRIORS OF IRAN
- a.k.a. PEOPLE'S MUJAHEDIN ORGANIZATION OF IRAN
- a.k.a. PMOI
- a.k.a. SAZEMAN-E MUJAHEDIN-E KHALQ-E IRAN
- a.k.a. THE NATIONAL LIBERATION ARMY OF IRAN

NATIONAL LIBERATION ARMY
- a.k.a. ELN
- a.k.a. EJERCITO DE LIBERACION NACIONAL

PALESTINE ISLAMIC JIHAD—SHAQAQI FACTION
- a.k.a. ABU GHUNAYM SQUAD OF THE HIZBALLAH BAYT AL-MAQDIS
- a.k.a. AL-AWDAH BRIGADES
- a.k.a. AL-QUDS BRIGADES
- a.k.a. AL-QUDS SQUADS
- a.k.a. ISLAMIC JIHAD IN PALESTINE
- a.k.a. ISLAMIC JIHAD OF PALESTINE
- a.k.a. PALESTINIAN ISLAMIC JIHAD
- a.k.a. PIJ
- a.k.a. PIJ-SHALLAH FACTION
- a.k.a. PIJ-SHAQAQI FACTION
- a.k.a. SAYARA AL-QUDS

PALESTINE LIBERATION FRONT—ABU ABBAS FACTION
- a.k.a. PALESTINE LIBERATION FRONT
- a.k.a. PLF
- a.k.a. PLF-ABU ABBAS

POPULAR FRONT FOR THE LIBERATION OF PALESTINE—GENERAL COMMAND
- a.k.a. PFLP-GC

REAL IRA
- a.k.a. 32 COUNTY SOVEREIGNTY COMMITTEE
- a.k.a. 32 COUNTY SOVEREIGNTY MOVEMENT
- a.k.a. IRISH REPUBLICAN PRISONERS WELFARE ASSOCIATION
- a.k.a. REAL IRISH REPUBLICAN ARMY
- a.k.a. REAL OGLAIGH NA HEIREANN
- a.k.a. RIRA

REVOLUTIONARY ARMED FORCES OF COLOMBIA
- a.k.a. FARC

REVOLUTIONARY NUCLEI
- a.k.a. POPULAR REVOLUTIONARY STRUGGLE
- a.k.a. EPANASTATIKOS LAIKOS AGONAS
- a.k.a. REVOLUTIONARY POPULAR STRUGGLE
- a.k.a. REVOLUTIONARY PEOPLE'S STRUGGLE
- a.k.a. JUNE 78
- a.k.a. ORGANIZATION OF REVOLUTIONARY INTERNATIONALIST SOLIDARITY
- a.k.a. ELA
- a.k.a. REVOLUTIONARY CELLS
- a.k.a. LIBERATION STRUGGLE

REVOLUTIONARY ORGANIZATION 17 NOVEMBER
- a.k.a. 17 NOVEMBER
- a.k.a. EPANASTATIKI ORGANOSI 17 NOEMVRI

REVOLUTIONARY PEOPLE'S LIBERATION PARTY/FRONT
- a.k.a. DEVRIMCI HALK KURTULUS PARTISI-CEPHESI
- a.k.a. DHKP/C;

a.k.a. DEVRIMCI SOL
a.k.a. REVOLUTIONARY LEFT
a.k.a. DEV SOL
a.k.a. DEV SOL SILAHLI DEVRIMCI BIRLIKLERI
a.k.a. DEV SOL SDB
a.k.a. DEV SOL ARMED REVOLUTIONARY UNITS

SHINING PATH
a.k.a. SENDERO LUMINOSO
a.k.a. SL
a.k.a. PARTIDO COMUNISTA DEL PERU EN EL SENDERO LUMINOSO DE JOSE CARLOS MARIATEGUI (COMMUNIST PARTY OF PERU ON THE SHINING PATH OF JOSE CARLOS MARIATEGUI)
a.k.a. PARTIDO COMUNISTA DEL PERU (COMMUNIST PARTY OF PERU)
a.k.a. PCP
a.k.a. SOCORRO POPULAR DEL PERU (PEOPLE'S AID OF PERU)
a.k.a. SPP
a.k.a. EJERCITO GUERRILLERO POPULAR (PEOPLE'S GUERRILLA ARMY)
a.k.a. EGP
a.k.a. EJERCITO POPULAR DE LIBERACION (PEOPLE'S LIBERATION ARMY)
a.k.a. EPL

UNITED SELF-DEFENSE FORCES OF COLOMBIA
a.k.a. AUC
a.k.a. AUTODEFENSAS UNIDAS DE COLOMBIA

Designation by the Secretary of State on December 18, 2001

LASHKAR-E-TAIBA
a.k.a. LASHKAR E-TAYYIBA
a.k.a. LASKAR E-TOIBA
a.k.a. ARMY OF THE RIGHTEOUS

Designations by the Secretary of State on December 31, 2001

CONTINUITY IRA (CIRA)

LOYALIST VOLUNTEER FORCE (LVF)

ORANGE VOLUNTEERS (OV)

RED HAND DEFENDERS (RHD)

ULSTER DEFENCE ASSOCIATION/ ULSTER FREEDOM FIGHTERS (UDA/UFF)

FIRST OF OCTOBER ANTIFASCIST RESISTANCE GROUP (GRAPO)

Dated: March 13, 2002.

Francis X. Taylor,

Coordinator for Counterterrorism, Department of State.

[FR Doc. 02–6577 Filed 3–14–02; 3:48 pm]

BILLING CODE 4710–10–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Technical Corrections to the Harmonized Tariff Schedule of the United States

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The United States Trade Representative (USTR) is making technical corrections to the Harmonized Tariff Schedule of the United States (HTS) as set forth in the annex to this notice, pursuant to authority delegated to the USTR in Presidential Proclamation 6969 of January 27, 1997 (62 FR 4415). These modifications correct several inadvertent errors and omissions in the Annex to Presidential Proclamation 7529 of March 5, 2002 (67 FR 10553) so that the intended tariff treatment is provided.

EFFECTIVE DATE: March 20, 2002.

FOR FURTHER INFORMATION CONTACT: Office of Industry, Office of the United States Trade Representative, 600 17th Street, NW, Room 501, Washington DC, 20508. Telephone (202) 395–5656.

SUPPLEMENTARY INFORMATION: On March 5, 2002, Proclamation 7529 established increases in duty and a tariff-rate quota (safeguard measures) pursuant to section 203 of the Trade Act of 1974 (19 U.S.C. 2253) on imports of certain steel products described in paragraph 7 of that proclamation. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m., EST, on March 20, 2002, Proclamation 7529 modifies the HTS so as to provide for such increased duties and a tariff-rate quota. The annex to this notice makes technical corrections to the HTS to remedy several technical errors and omissions introduced through the annex to Proclamation 7529, so that the intended tariff treatment is provided. In particular, the annex to this notice corrects (1) errors in the physical dimensions or chemical composition of certain products excluded from the application of the safeguard measures and (2) errors regarding the exclusion of products of certain developing country WTO Members from the safeguard measures.

Proclamation 6969 authorized the USTR to exercise the authority provided to the President under section 604 of the Trade Act of 1974 (19 U.S.C. 2483) to embody rectifications, technical or conforming changes, or similar modifications in the HTS. Under authority vested in the USTR by Proclamation 6969, the rectifications, technical and conforming changes, and similar modifications set forth in the annex to this notice shall be embodied in the HTS with respect to goods entered, or withdrawn from warehouse for consumption, on or after March 20, 2002.

Peter F. Allgeier,

Deputy United States Trade Representative.

Annex

The Harmonized Tariff Schedule of the United States (HTS) is modified as set forth in this annex, effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m., EST, on March 20, 2002. The following provisions supersede matter now in the HTS:

(1) United States note 11(b) to subchapter III of chapter 99 of the HTS is modified as follows: (a) In subdivision (b)(xi), the expression ''ASTM 345 method A'' is deleted and ''ASTM E45 method A'' is inserted in lieu thereof; (b) in subdivision (b)(xii), the expression ''Charpy-notch'' is deleted and ''Charpy V-notch'' is inserted in lieu thereof; (c) in subdivision (b)(xiv), the expression ''measuring over 4.75 mm in thickness, not in coils,'' is inserted after ''steel products'', and the expression ''manufactured to'' is deleted and ''suitable for use in the manufacture of line pipe of'' is inserted in lieu thereof; (d) in subdivision (b)(xvi)(A) the unit of measure ''4.55'' is deleted and ''1.91'' is inserted in lieu thereof; (e) in the first line of subdivision (b)(xvii), the expression ''or dual phase'' is inserted after ''(TRIP)''; and in subdivisions (b)(xvii)(A) through (C), inclusive, the following modifications are made at each appearance: ''2000 mm to 2499'' is deleted and ''2.000 mm to 2.499'' is inserted in lieu thereof, ''2500 mm to 3249'' is deleted and ''2.500 mm to 3.249'' is inserted in lieu thereof, ''3250 mm to 3999'' is deleted and ''3.250 mm to 3.999'' is inserted in lieu thereof, and ''4000 mm to 6000'' is deleted and ''4.000 mm to 6.000'' is inserted in lieu thereof; (f) in subdivision (b)(xix)(B), the expression ''aluminum of 0.015 percent TV'' is deleted and ''aluminum of 0.04 percent typical value (TV)'' is inserted in lieu thereof; (g) in subdivision (b)(xxii)(B), the expression ''vanadium 0.15 percent,'' is inserted after ''phosphorus 0.010 percent,''; (h) in the opening language of subdivision (b)(xxiv), the word ''hot-rolled'' is inserted before ''flat-rolled'', the expression, ''in coils,'' is inserted after ''products'', the parenthetical reference is deleted, and the unit of measure ''17.8'' is deleted and ''19.65'' is inserted in lieu thereof; (i) in subdivision (b)(xxv), the parenthetical expression ''(per mm of width)'' is modified to read ''(per 25.4 mm of width)''; (j) in subdivision (b)(xxvi), subdivisions (A) and (B) and their subordinate paragraphs are deleted and the following new provisions inserted in lieu thereof:

''(A) uncoated flat products, less than 4.75 mm in thickness, not further worked than cold-rolled, comprising either—

(I) certain uncoated cold-rolled flat-rolled products (of Grade C80M), of a width less than 300 mm and a thickness exceeding 0.25 mm, produced with following chemistries (in percent by weight): carbon content greater

than or equal to 0.74 percent but less than or equal to 0.80 percent; silicon content greater than or equal to 0.10 percent but less than or equal to 0.25 percent; manganese content greater than or equal to 0.30 percent but less than or equal to 0.60 percent; phosphorus content less than or equal to 0.025 percent; sulfur content less than or equal to 0.015 percent; chromium content greater than or equal to 0.40 percent but less than or equal to 0.55 percent; copper content less than or equal to 0.15 percent; nickel content less than or equal to 0.15 percent; aluminum content greater than or equal to 0.02 percent but less than or equal to 0.05 percent; oxide content less than or equal to 0.0012 percent; titanium content less than or equal to 0.002 percent; and tin content less than or equal to 0.008 percent;

(II) certain uncoated cold-rolled flat-rolled products (of Grade 16MnCr5M2), of a width less than 300 mm and a thickness exceeding 0.25 mm, produced with following chemistries (in percent by weight): carbon content greater than or equal to 0.12 percent but less than or equal to 0.16 percent; silicon content less than or equal to 0.10 percent; manganese content greater than or equal to 0.95 percent but less than or equal to 1.05 percent; phosphorus content less than or equal to 0.020 percent; sulfur content less than or equal to 0.005 percent; combined phosphorus and sulfur content of less than or equal to 0.020 percent; chromium content greater than or equal to 0.75 percent but less than or equal to 0.85 percent; copper content less than or equal to 0.10 percent; nickel content less than or equal to 0.10 percent; nitrogen content greater than or equal to 0.004 percent but less than or equal to 0.008 percent; aluminum content greater than or equal to 0.02 percent but less than or equal to 0.07 percent;

(B) bonderized (phosphate coated) cold-rolled flat-rolled products, less than 4.75 mm in thickness, comprising—

(I) C15M bonderized flat-rolled products, of a width less than 300 mm and a thickness exceeding 0.25 mm, coated (bonderized) on one side with a special phosphate coating, produced to the following chemistries (in percent by weight): carbon content greater than or equal to 0.12 percent but less than or equal to 0.15 percent; silicon content less than or equal to 0.12 percent; manganese content greater than or equal to 0.50 percent but less than or equal to 0.70 percent; phosphorus content less than or equal to 0.030 percent; sulfur content less than or equal to 0.025 percent; chromium content greater than or equal to 0.20 percent but less than or equal to 0.40 percent; copper content less than or equal to 0.20 percent; nickel content greater than or equal to 0.20 percent but less than or equal to 0.40 percent; and aluminum content greater than or equal to 0.07 percent but less than or equal to 0.12 percent;

(II) MRST443 bonderized flat-rolled products, of a width less than 300 mm and a thickness exceeding 0.25 mm, coated (bonderized) on one side with a special phosphate coating, produced to the following chemistries (in percent by weight): carbon content greater than or equal to 0.06 percent but less than or equal to 0.09 percent; silicon content less than or equal to 0.05 percent; manganese content greater than or equal to 0.55 percent but less than or equal to 0.75 percent; phosphorus content less than or equal to 0.03 percent; sulfur content less than or equal to 0.02 percent; nitrogen content greater than or equal to 0.004 percent but less than or equal to 0.006 percent; and aluminum content greater than or equal to 0.09 percent but less than or equal to 0.16 percent;

(III)16MnCr5M bonderized flat-rolled products, of a width less than 300 mm and a thickness exceeding 0.25 mm, coated (bonderized) on one side with a special phosphate coating, produced to the following chemistries (in percent by weight): carbon content greater than or equal to 0.14 percent but less than or equal to 0.18 percent; silicon content less than or equal to 0.10 percent; manganese content greater than or equal to 1.0 percent but less than or equal to 1.2 percent; phosphorus content less than or equal to 0.02 percent; sulfur content less than or equal to 0.008 percent; combined phosphorus and sulfur content of less than or equal to 0.02 percent; chromium content greater than or equal to 0.85 percent but less than or equal to 1.05 percent; copper content less than or equal 0.10 percent; nickel content less than or equal to 0.10 percent; nitrogen content greater than or equal to 0.004 percent but less than or equal to 0.008 percent; and aluminum content greater than or equal to 0.020 percent but less than or equal to 0.07 percent; or

(IV) C16M bonderized flat-rolled products, of a width less than 300 mm and a thickness exceeding 0.25 mm, coated (bonderized) on one side with a special phosphate coating, produced to the following chemistries (in percent by weight): carbon content greater than or equal to 0.145 percent but less than or equal to 0.194 percent; silicon content less than or equal to 0.10 percent; manganese content greater than or equal to 0.75 percent but less than or equal to 1.0 percent; phosphorus content less than or equal to 0.02 percent; sulfur content less than or equal to 0.01 percent; combined phosphorus and sulfur content less than or equal to 0.025 percent; chromium content greater than or equal to 0.55 percent but less than or equal to 0.70 percent; copper content less than or equal to 0.10 percent; nickel content less than or equal to 0.10 percent; nitrogen content greater than or equal to 0.004 percent but less than or equal to 0.008 percent; and aluminum content greater than or equal to 0.02 percent but less than or equal to 0.07 percent;

(k) in subdivision (b)(xxxi), the expression ''4.75 mm or greater'' is deleted and ''less than 4.75 mm'' is inserted in lieu thereof; and the second appearance of the expression ''ASTM B753'' is modified to read ''ASTM A753''; (l) in subdivision (b)(xxvii)(B), the expression ''certain flat products for battery cell flat products'' is deleted and the expression ''certain battery cell flat-rolled products'' is inserted in lieu thereof; (m) in subdivision (b)(xxxii)(B)(IV), the expression ''elongation 15–28 percent;'' is deleted and ''elongation 17–28 percent'' is inserted in lieu thereof; (n) in subdivisions (b)(xxxii)(B)(I) through (XV), inclusive, the expression ''silicon maximum 0.010 percent by weight'' is deleted and ''sulfur maximum 0.010 percent by weight'' is inserted in lieu thereof; (o) in subdivision (b)(xxxii)(C), the expression ''0.048 mm and widths from 76.2 mm to 152.4 mm'' is deleted and ''0.48 mm and widths from 762 mm to 1524 mm'' is inserted in lieu thereof; (p) in subdivision (b)(xxxiii), ''.0127'' is deleted and ''0.0127'' is inserted in lieu there, and the language (as just modified) after ''decarburization: 0.0127 mm maximum;'' is deleted and the following language is inserted in lieu thereof: ''thickness of 0.5964 mm and gauge tolerance of +/−0.0127 mm, thickness of 0.431 mm and gauge tolerance of +/−0.0127 mm or thickness of 0.888 mm and gauge tolerance of +/−0.025 mm:'' (q) in subdivision (b)(xxxiv)(D), the expression ''width range 93.36 mm–11.98 mm'' is deleted and ''width range 7.01 mm−11.98mm'' is inserted in lieu thereof; (r) in subdivision (b)(xxxv)(A) the word ''nickle'' is deleted and ''nickel'' is inserted in lieu thereof; (s) in the opening language of subdivision (b)(xxxix), the expression ''heat shrinkable (HS) band products designated as X–142, as described below:'' is deleted and ''heat shrinkable (HS) band products (subdivisions A–E) and other galvanized products (subdivision F), designated as X–142, as described below:'' is inserted in lieu thereof; (t) in subdivision (b)(xxxix)(A), the expression ''zinc 7 g/m^2'' is deleted and ''zinc 17 g/m^2'' is inserted in lieu thereof; (u) in subdivision (b)(xxxix)(F), the expression ''from 0.03 percent to 0.6 percent carbon'' is deleted and ''from 0.03 percent to 0.06 percent carbon'' is inserted in lieu thereof, and the expression ''a thickness over 0.312 mm but not over 0.38 mm;'' is deleted and ''a thickness of 0.35 mm with tolerance of +/−0.038 mm;'' is inserted in lieu thereof; (v) in subdivision (b)(xl)(C), the expression ''μ = 800'' is deleted and ''μ greater than or equal to 800'' is inserted in lieu thereof, and the expression ''maximum deviation from horizontal flat surface of 5 mm or more;'' is deleted and ''maximum deviation from horizontal flat surface of 5 mm maximum;'' is inserted in lieu thereof; (w) in subdivision (b)(xl)(D), the expression ''μ = 500'' is deleted and ''μ greater than or equal to 500'' is inserted in lieu thereof; (x) in the opening language of subdivision (b)(xlviii), the word ''line'' is inserted after ''welded'', and in subdivision (b)(xlviii)(B) the unit of measure ''914.4'' is deleted and ''762'' is inserted in lieu thereof; (y) in subdivision (b)(xlviii)(B), the unit of measure ''22.3'' is deleted and ''22.2'' is inserted in lieu thereof, and the expression ''grades X52 through X5'' is deleted and ''grades X52 through X56'' is inserted in lieu thereof; (z) in subdivision (b)(xlviii)(C), the unit of measure ''22.3'' is deleted and ''22.2'' is inserted in lieu thereof; and

(aa) In subdivision (b)(xiviii)(F), the unit of measure ''20.57'' is deleted and ''22.86'' is inserted in lieu thereof; and (bb) by adding at the end of subdivision (b)(xlviii) the following new subparagraph (H):

''(H) products having an outside diameter measuring 1625.6 mm or greater;''.

(2) U.S. note 11(d) to subchapter III of chapter 99 of the HTS is modified as follows: (a) in subdivision (d)(ii)(A), the expression

''9903.72.30 through 9903.73.39'' is deleted and ''9903.72.30 through 9903.73.23'' is inserted in lieu thereof; and (b) in subdivision (d)(ii)(C), the expression ''9903.73.74 through 9903.73.86'' is deleted and ''9903.73.74 through 9903.73.95'' is inserted in lieu thereof.

(3) The superior text to subheadings 9903.72.30 through 9903.72.48, inclusive, is modified by deleting the language ''(other than stainless steel or tool steel), of rectangular cross section, having a width measuring two or more times the thickness (provided for in subheading 7207.12.00, 7207.20.00 or 7224.90.00)'' and by inserting ''(other than stainless steel, tool steel, or high-nickel alloy steel), of rectangular cross section, having a width measuring two or more times the thickness, if provided for in subheading 7207.12.00 or 7207.20.00, or having a width measuring four or more times the thickness if provided for in 7224.90.00'' in lieu thereof.

(4) The superior text to subheadings 9903.72.65 through 9903.72.82 is modified by inserting ''7208.25.60,'' after 7208.25.30,''.

(5) The superior text to subheadings 9903.72.85 through 9903.73.04, inclusive, is modified by deleting the expression ''if in coils'' and by inserting ''if not in coils'' in lieu thereof.

(6) The superior text to subheadings 9903.73.07 through 9903.73.23 is modified by inserting ''7225.99.00,'' after ''7225.92.00,''.

(7) The superior text to subheadings 9903.73.26 through 9903.73.39, inclusive, is modified by deleting ''(except products of Brazil)''.

(8) The superior text to subheadings 9903.73.74 through 9903.73.86, inclusive, is modified by deleting the expression ''of steel, not of a kind'' and by inserting ''of steel (other than stainless or tool steel), not of a kind'' in lieu thereof.

(9) Subheading 9903.73.77 is modified by deleting ''note 11(b)(xlvii)'' and by inserting ''note 11(b)(xlviii)'' in lieu thereof.

(10) Subheading 9903.73.78 is modified by deleting ''note 11(b)(li)'' and by inserting ''note 11(b)(xlix)'' in lieu thereof.

(11) The superior text to subheadings 9903.73.88 through 9903.73.95, inclusive, is modified by deleting ''India and Romania'' and by inserting ''India, Romania and Thailand'' in lieu thereof.

(12) The superior text to subheadings 9903.74.08 through 9903.74.16, inclusive, is modified by deleting ''and having a diameter of less than 19 mm'' and by inserting ''having a diameter of 19 mm or more'' in lieu thereof.

[FR Doc. 02–6735 Filed 3–15–02; 3:31 pm]

BILLING CODE 3190–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Public Comments Regarding the Doha Multilateral Trade Negotiations and Agenda in the World Trade Organization (WTO)

ACTION: Notice and request for comments.

SUMMARY: The Trade Policy Staff Committee (TPSC) is requesting written public comments on general U.S. negotiating objectives as well as country and item-specific priorities for the negotiations and work program launched at the WTO's Fourth Ministerial Conference in November 2001. WTO Trade Ministers at their Fourth Ministerial Meeting in Doha, Qatar approved: (1) A declaration launching new global trade negotiations and a work program; (2) a declaration on Intellectual Property Protection (TRIPS) and Access to Medicines and Public Health; and (3) a Decision on Implementation-Related Issues and Concerns raised by Developing Countries. Negotiations will be conducted at the WTO's headquarters in Geneva, Switzerland. The WTO General Council and the Trade Negotiations Committee will oversee the negotiations and work program of the WTO. Comments received will be considered by the Executive Branch in formulating U.S. positions and objectives for U.S. participation in the negotiations and discussions on the WTO's agenda.

DATES: Public comments are due by May 1, 2002.

ADDRESSES: Office of the U.S. Trade Representative, 1724 F Street, NW, Washington, DC, 20508.

FOR FURTHER INFORMATION CONTACT: General inquiries should be made to the USTR Office of WTO and Multilateral Affairs at (202) 395–6843; calls on individual subjects will be transferred as appropriate. Procedural inquiries concerning the public comment process should be directed to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, (202) 395–3475. Further information on the WTO and the declarations agreed at the Fourth Ministerial can be obtained via Internet at the WTO Web site *www.wto.org,* the Office of the U.S. Trade Representative at *www.ustr.gov.* Attention is also drawn to the President's Annual Report on the Trade Agreements Program, which is available on the USTR Internet site and contains extensive information on the WTO, the Doha Ministerial Meeting and the work underway in the WTO.

SUPPLEMENTARY INFORMATION: The TPSC invites written comments from the public on issues to be addressed in the course of the negotiations launched at the WTO's Fourth Ministerial Conference, in Doha, Qatar in November 2001. The TPSC sought comments in three earlier solicitations prior to the Doha Ministerial: (1) Public Comments on Preparations for the Fourth Ministerial Conference of the World Trade Organization, November 9–13, 2001 in Doha, Qatar, published in 66 FR 18142, April 5, 2001; (2) Public Comments for Mandated Multilateral Trade Negotiations on Agriculture and Services in the WTO and Priorities for Future Market Access Negotiations on Non-Agricultural Products, published in 65 FR 16450, March 28, 2000; and (3) Solicitation of Public Comments on Institutional Improvements to the World Trade Organization (WTO), Particularly With Respect to the Transparency of its Operations and Outreach to Civil Society, which included a solicitation of comments regarding the WTO's dispute settlement operations and was published in 65 FR 36501, June 8, 2000. Supplementary or new submissions on these topics are welcome, but comments submitted pursuant to the earlier notice need not be resubmitted. The TPSC will review supplemental or new comments together with earlier submissions in developing positions.

The Doha Development Agenda agreed to at the WTO's Fourth Ministerial Meeting establishes a negotiating agenda that is to conclude within three years (not later than 1 January 2005), and sets out a certain number of issues to be considered further at the next ministerial meeting of the WTO in 2003. In addition to the mandated negotiations in agriculture and services, the negotiation of a multilateral system of notification and registration of geographical indications for wine and spirits, and the negotiation of improvements to the Dispute Settlement Understanding (DSU), negotiations at Doha were launched on market access for non-agricultural products; WTO rules (on antidumping, subsidies, fisheries subsidies, and regional trade agreements); and negotiations on limited aspects of the relationship between WTO and multilateral environmental agreements. The Doha agenda foresees further work on the so-called Singapore issues of Trade and Competition, Trade and Investment, Transparency in Government Procurement, and Trade Facilitation, leading to decisions on negotiations by the time of the WTO's Fifth Ministerial Meeting in 2003. In

addition, the Doha agenda focuses on a variety of issues relating to the regular work program of the WTO which have a bearing on the negotiations, including: further work on implementation of the existing Agreements; integration of developing countries into the multilateral trade system; trade-related technical assistance and capacity building; small economies; special and differential treatment; treatment of least-developed countries; electronic commerce; trade, debt and finance; trade and technology, and the work of the Committee on Trade and Environment (CTE).

Comments are welcome with as much specificity as the respondent can provide on general or commodity-specific negotiating objectives; country and product-specific export interests or barriers; and experience with particular foreign measures that impede U.S. market access. An indication or estimation of the anticipated benefits from liberalization of the identified barriers would be helpful. Since trade-related technical assistance and capacity building for developing countries will be prominent in discussions, an indication of what private sector technical assistance and capacity building activities are under way or planned in each negotiating area would also be welcome. An initial task in many of these subject areas will be for governments to identify appropriate negotiating methods to achieve the desired liberalization. Comments on these methodology questions would therefore also be appropriate.

The U.S. International Trade Commission has provided to the TPSC the public comments received on agricultural and non-agricultural products as part of its investigation (Investigation No. 332–405), Probable Economic Effects on Reduction or Elimination of U.S. Tariffs (November 1999 (Confidential report)). On February 11, 2002 the U.S. Trade Representative requested that the ITC update its investigation. The ITC instituted its investigation (Investigation No. 332–440, Probable Effect of the Reduction or Elimination of U.S. Tariffs) on February 28, 2002 and published its Notice of Institution in 67 FR 10576, March 8, 2002. The ITC will again provide the public comments received as part of its investigation so these comments need not be resubmitted separately to the TPSC.

By separate notice, and pursuant to Executive Order 13141, USTR will be initiating an environmental review of the negotiations launched by the Doha Declaration and requesting public comment on the scope of the environmental review.

For ease of submission, the TPSC has identified the following headings under which comments may be submitted. Submissions should identify the relevant subject area or areas to which comments apply. These include:

(1) WTO Built-in Agenda Negotiations

(A) Agriculture. Supplementary comments are invited on the negotiations currently underway on agriculture pursuant to the terms of the Uruguay Round Agreements and the Doha Declaration. The mandated negotiations in agriculture address agricultural goods from Chapters 1–24, except fish and fish products; 2905.43 (mannitol); 2905.44 (sorbitol); 3301 (essential oils); 3501–3505 (albuminoidal substances, modified starches, glues); 3809.10 (finishing agents); 3823.60 (sorbitol n.e.p.); 4101–4103 (hides and skins); 4301 (raw furskins); 5001–5003 (raw silk and silk waste); 5101–5103 (wool and animal hair); 5201–5203 (raw cotton, waste and cotton carded or combed); 5301 (raw flax); and 5302 (raw hemp), as specified by the Agreement on Agriculture. The Uruguay Round Agreement on Agriculture stipulates in Article 20 that a continuation of the reform process begin ''one year before the end of the implementation period,'' i.e., the beginning of 2000. The Doha Declaration outlines the objectives of the agriculture negotiations: substantial improvements in market access; reduction, with a view to phasing out, all forms of export subsidies; and, substantial reductions in domestic support. The areas for negotiation are market access, such as tariffs, tariff-rate quotas, tariff administration, and import state trading enterprises; domestic support, including trade-distorting support and non-trade distorting support; and export competition, such as export subsidies, export credits, export state trading enterprises, and export taxes and restrictions. Comments on sectoral initiatives and rules and disciplines affecting trade in agricultural goods are welcome. Respondents are requested to provide as much specificity as possible on a commodity and country-specific level focusing on trade interests and barriers. To the maximum extent possible, these should be identified by the Harmonized System nomenclature at the 6-digit level and for specific markets of interest. The Doha Declaration calls for agreement on modalities for the negotiations to be reached by March 31, 2003, and the submission of initial schedules by the WTO Fifth Ministerial meeting, likely to be held by mid-2003. A helpful supplement to the written statement would be the provision of a disk containing as much of the technical details as possible, either in a spreadsheet format or in a word processing table format, with each tariff line in a separate cell. This disk should be labeled and should clearly identify the software used and the respondent.

As noted above, a solicitation of public comments was published on March 28, 2000. New comments are welcome, but comments submitted pursuant to the earlier notice need not be resubmitted.

(B) Services. Supplementary comments are invited on the negotiations currently underway on trade in services pursuant to the terms of the Uruguay Round Agreements and the Doha Declaration. The General Agreement on Trade in Services (GATS) provides, in Article XIX, ''Members shall enter into successive rounds of negotiations, beginning not later than five years from the date of entry into force of the WTO Agreement,'' *i.e.,* the beginning of 2000. For services, topics for negotiating objectives include removal or reduction of barriers to U.S. services exports under existing GATS disciplines; establishment of new GATS disciplines to ensure effective market access, *e.g.,* proposed disciplines on domestic regulations on services, possibly addressing transparency and necessity; and clarification of sectoral definitions in the Agreement. The Doha Declaration calls for the submission of initial requests for specific commitments by June 30, 2002 and initial offers by March 31, 2003.

Services sectors under consideration in the negotiations include: (1) Business services (including professional and related services such as legal, accounting, auditing and bookkeeping, taxation, medical, dental, veterinary, engineering, architectural, and urban planning services), computer and related services, research and development services, real estate services, rental and leasing services, and advertising and management services; (2) communication services (including telecommunications services, audiovisual services, express delivery services); (3) construction and related engineering services; (4) distribution services (including wholesale, retail, and franchising services); (5) educational and training services; (6) environmental services; (7) energy services; (8) financial services, including insurance and insurance-related services, banking and securities services; (9) health-related and social services; (10) tourism and travel-related

services; (11) recreational, cultural and sporting services; and (12) transport services.

Comments on services in response to this notice should include, wherever appropriate, sector-specific export priorities by country. A helpful supplement to the written statement would be the provision of a disk containing as much of the technical details as possible, either in a spreadsheet format or in a word processing table format, with each services sector in a separate cell. This disk should be labeled and should clearly identify the software used and the respondent.

As noted above, a solicitation of public comments was published on March 28, 2000. New comments are welcome, but comments submitted pursuant to the notice need not be resubmitted.

(C) Trade-Related Aspects of Intellectual Property Rights. The Council for Trade-Related Aspects of Intellectual Property Rights (Council for TRIPS), pursuant to Article 23.4 of the TRIPS Agreement, has been deliberating on the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits. At Doha, it was agreed that these negotiations should be concluded by the WTO's Fifth Ministerial Conference.

Specific issues to address include: (1) The features that should be included or excluded in a multilateral system of notification and registration of geographical indications for wines and spirits, with justification; (2) how, if at all, such a system should address competing rights in trademarks and geographical indications; (3) how, if at all, the system should address competing rights in other geographical indications; (4) how the provisions of the system should relate to Article 6 ter of the Paris Convention (which prohibits the registration of flags and other official state emblems); (5) how the provisions relate to the U.S. Federal system of notifications; and (6) the legal effect of a notification, both with respect to trademarks and to other geographical indications.

While no other negotiations were agreed at Doha, the TRIPS Council work program was strengthened in terms of its work on issues of interest to Members, including on implementation, the examination of a possible extension of protection of geographical indications for products other than wine and spirits, and the issue of access to medicines, which was the subject of a separate declaration at Doha.

(2) Non-agricultural or industrial market access. Supplementary comments are invited on the negotiations launched on market access. Comments are welcome with as much specificity as the respondent can provide on general negotiating objectives and/or targets; country- and product-specific export interests or barriers; and particular measures that might be improved in the context of the new negotiations, including both tariffs and non-tariff measures (NTMs). With regard to NTMs, any available details on the foreign laws or regulations that lie behind the barrier would also be helpful. To the maximum extent possible, these should be identified by Harmonized System nomenclature at the 6-digit level, (or preferably 8-digit level or higher, where available) and should specify markets of interest. The United States will work with trading partners to reach agreement on negotiating modalities concurrent with the schedule established for agriculture modalities, by March 31, 2003. Specific comments on possible approaches to negotiations are invited (*i.e.,* sectoral initiatives such as zero-for-zero or harmonization approaches, request/offer and formula methodologies, and approaches that address the interests of small- and medium-sized enterprises). Comments should encompass the priorities and methodologies for the negotiation of environmental goods identified in the Doha Declaration under the heading of Trade and the Environment. A helpful supplement to the written statement would be the provision of a disk containing as much of the technical details as possible, either in a spreadsheet format or in a word processing table format, with each tariff line in a separate cell. This disk should be labeled and should clearly identify the software used and the respondent.

(3) WTO Rules. Ministers established a carefully-balanced mandate for negotiations dealing with rules in four specific areas: antidumping; subsidies and countervailing measures; fisheries subsidies and regional trade agreements. The mandate calls for an identification of issues in the initial phase and subsequent negotiations aimed at improving and clarifying disciplines. Comments are invited on U.S. objectives for these negotiations, bearing in mind that there is agreement to preserve the basic concepts, principles and effectiveness of the Antidumping and Subsidies Agreements and their instruments and objectives. In particular, respondents may wish to address ways to enhance disciplines on trade distorting practices that lead to unfair trade, as well as the due process, transparency and judicial review provisions of the Agreements. (Respondents may wish to review the articles dealing with ''Evidence,'' Public Notice and Explanation of Determinations and Judicial Review) and may also wish to focus on the linkages between the rules issues and the operation of the Dispute Settlement Understanding (DSU).

With respect to the negotiations related to fisheries disciplines, respondents should focus on the nature and scope of negotiations on the specific issues of fisheries subsidies, particularly those that lead to overcapacity and overfishing. With respect to the negotiations on regional trade agreements, attention is drawn to the work of the Committee on Regional Trade Agreements (CRTA) in the WTO, including the systemic issues that have been identified in the CRTA work program. Respondents should focus on the objectives that the U.S. should pursue in discussions aimed at revising the rules in these areas in the light of current practice.

(4) Dispute Settlement. The mandate calls on Members to complete their negotiations to improve and clarify WTO rules on dispute settlement procedures by May 2003. The United States welcomes the opportunity to refine the dispute settlement system based on the experiences of Members over the past six years. The United States has pursued a more open and transparent set of procedures which achieve effective and timely results. Comments are welcome on the objectives that the United States should be pursuing in this critical area of negotiations.

(5) Trade and the Environment. At Doha, Ministers agreed on a package of environmental elements that demonstrates the WTO's commitment to sustainable development and to simultaneously advancing trade, environment, and development interests. These mandates enable U.S. negotiators to pursue an affirmative agenda, focusing on the reduction/elimination of environmentally harmful subsidies in fisheries and export subsidies in agriculture as well as on improved market access for environmental goods and services; and encouraging capacity-building for developing Members, including in connection with environmental reviews of trade agreements. The role of the Committee on Trade and Environment (CTE) was strengthened and emphasis placed on the win-win aspects of market access, relevant provisions of TRIPs, and labeling requirements for environmental purposes, with a mandate to identify any need to clarify

relevant rules. The Members also agreed to enhance the mutual supportiveness of multilateral environmental agreements (MEAs) and the WTO rules by developing procedures for regular information exchange between WTO committees and MEA secretariats, and by further exploring the relationship between existing WTO rules and specific trade obligations set out in MEAs, and by reducing or eliminating tariff and non-tariff barriers to environmental goods and services. This work on MEAs will be conducted by the CTE meeting in Special Session. Comments are welcome on U.S. objectives in all the areas identified above, recognizing that in certain cases, such as fisheries subsidies and liberalization of environmental goods resources, the actual negotiations will take place in other relevant negotiating groups.

(6) Singapore Issues. At the 1996 Singapore Ministerial Meeting, Ministers agreed to work programs in the areas of: (1) Trade and competition; (2) trade and investment; (3) trade facilitation; and (4) transparency in government procurement. Comments are welcome on all of these issues and U.S. objectives for these issues which shall be considered further at the Fifth Ministerial Meeting.

A. Interaction Between Trade and Competition Policy

The working group has been assigned a modest program of work aimed at identifying core principles, with further decisions at the next (Fifth) Ministerial. In the first stage, the WTO will focus on clarification of ''core principles,'' including transparency, non-discrimination and procedural fairness, and provisions on hard-core cartels; modalities for voluntary cooperation; and support for progressive reinforcement of competition institutions in developing countries through capacity building. At the Fifth Ministerial, a decision will be taken on the timing and specific content of negotiations.

B. Investment

The existing WTO working group on investment will clarify issues, such as scope, transparency, non-discrimination, modalities for making commitments, exceptions, and government-to-government dispute settlement. At the Fifth Ministerial, a decision will be taken on the time and specific content of the negotiations. Comments would also be welcome regarding the relationship of any potential WTO investment provisions with existing bilateral or regional investment agreements.

C. Trade Facilitation

Ministers outlined a focused program leading to negotiations aimed at meeting the needs for transparency and efficiency of the fast-paced global economy. Ministers agreed to provide for work on new WTO rules to make procedures at international borders more transparent and efficient. Negotiations will take place after the Fifth Ministerial on the basis of a decision to be taken at that Ministerial on modalities of negotiations. At that time, negotiations will be launched on WTO rules for expediting the movement and clearance of goods crossing borders, building on relevant GATT Articles (Articles V (transit), VIII (formalities), and X (transparency)).

We are also interested in identification of country-specific problems that U.S. exporters are having in terms of further expediting the movement, release and clearance of goods including goods in transit, non-transparent procedures, and requirements for certificates of origin for non-preferential trade.

D. Transparency in Government Procurement

Building on the Working Group's excellent preparatory work to date, Ministers agreed to a focused program that will lead to disciplines on government purchases, making an important contribution to combating corruption. Ministers agreed to negotiate an agreement providing for enhanced transparency in WTO Member government procurement procedures, to be launched at the Fifth Ministerial. The negotiations will not incorporate new market access commitments, meaning Members' preferential procurement programs will not be involved. The process will include a focused preparatory phase and a program of capacity building and technical assistance for developing countries.

(7) Development and related issues. The Doha Declaration focuses extensively on development, in particular the provision of technical assistance and capacity building support to trading partners. Comments are requested on ways to facilitate the participation of poorer, less-advanced and least-developed countries in the WTO, including making the WTO more responsive to development concerns. Comments should take into account work that has been conducted to integrate the technical assistance provided by various international organizations, including the WTO. Areas for comment could include provision of additional capacity building and market access opportunities, the possible graduation of countries from preference programs, the integration of trade into the poverty reduction strategies of other institutions, and improving the interplay between the work of the WTO and that of other international institutions such as the IMF, IBRD, UNCTAD, ILO and UNDP, to be more responsive to the development needs of WTO members. Respondents are encouraged to provide information on relevant technical assistance provided by their organization.

(8) Systemic Issues/Institutional Reform. Comments are requested on the important institutional issues raised about the WTO in terms of its openness and accountability, including its outreach to citizens. The United States continues to seek institutional improvements to the WTO, while preserving its intergovernmental nature. For example, the United States has consistently called for the WTO to build upon past progress by (i) expanding the range and improving the timeliness of WTO documents available to the public; (ii) strengthening the guidelines for consultations with non-governmental organizations (NGOs); (iii) enhancing the WTO's program of symposia and consultations on specific topics of mutual interest; (iv) expanding and improving the use of Internet facilities to reach more stakeholders in more creative ways; and (v) broadening the range of WTO meetings and events that would be open to the public. Another area of interest relates to the operation of the WTO and its relations among Members, and internal consultative processes and improvements, including the establishment of new institutional arrangements within the WTO that would build upon the general practice of operating on the basis of consensus of all members.

(9) Implementation. The separate decision on implementation agreed to at Doha, along with paragraph 12 of the Doha declaration, focus on the implementation concerns that have been an issue for many WTO members over the past several years. At Doha, Members addressed a wide range of developing country concerns regarding implementation of previous WTO agreements, primarily through clarifying existing provisions and seeking further work in WTO committees. Issues that remain outstanding were assigned to the WTO work program, or addressed in negotiations where they have been specifically mandated. Comments are invited on the work on implementation, recognizing that by the end of 2002 that

the TNC will receive reports from Members in line with paragraph 12(b) of the main declaration.

(10) Other issues. Comments are welcome on other issues that respondents believe would be appropriate to raise with respect to the negotiations and work program of the WTO, including the work assigned to the General Council regarding the subjects of trade, debt and finance, and transfer of technology, the Work Program on Electronic Commerce, as well as on environmental or labor issues relevant to the formulation of U.S. objectives for the negotiations and work program. The TPSC's aim is to be as inclusive as possible in providing opportunity for public comments.

Written Submissions. Comments should state clearly the objective(s) and should contain detailed information supporting the objective(s). Submissions should clearly indicate the general topic (i.e., agriculture, services or non-agricultural products). Persons submitting written comments should provide twenty (20) copies no later than noon May 1, 2002, to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, 1724 F Street NW, Washington, DC 20508. Where possible, respondents should also submit comments in electronic form by providing a disk together with the required twenty hard copies. An electronic submission alone will not be considered. The disk should be labeled and should clearly identify the software used and the respondent. As noted in the sections on services, agriculture and industrial market access, the provision of supplemental technical information would be helpful. This information should be provided in spreadsheet or table format in Microsoft Word, Word Perfect, Excel, Quatro Pro or MS Access.

Written comments submitted in connection with this request, except for information granted ''business confidential'' status pursuant to 15 CFR 2003.6, will be available for public inspection in the USTR Reading Room, Office of the United States Trade Representative. An appointment to review the file may be made by calling 202–395–6186. The Reading Room is open to the public from 10:00 a.m. to 12:00 noon, and from 1:00 p.m. to 4:00 p.m. Monday through Friday.

Business confidential information, including any information submitted on disks, will be subject to the requirements of 15 CFR 2003.6. Any business confidential material must be clearly marked as such and must be accompanied by a non-confidential summary thereof. If the submission contains business confidential information, twenty copies of a public version that does not contain confidential information, must be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, any submissions containing business confidential information must be clearly marked ''Business Confidential'' at the top and bottom of the cover page (or letter) and each succeeding page of the submission. The version that does not contain business confidential information should also be clearly marked, at the top and bottom of each page, ''public version'' or ''non-confidential.''

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 02–6606 Filed 3–18–02; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANE–2001–35.1–R0]

Notice of Policy for Parts Manufacturer Approval (PMA) for Critical Propeller Parts

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance; policy statement.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of policy for a uniform approach for Aircraft Certification Offices (ACOs) to evaluate PMA applications for both critical and life-limited propeller parts.

DATES: The FAA issued policy statement number ANE–2001–35.1–R0 on December 17, 2001.

FOR FURTHER INFORMATION CONTACT: Jay Turnberg, FAA, Engine and Propeller Standards Staff, ANE–110, 12 New England Executive Park, Burlington, MA 01803; e-mail: *jay.turnberg@faa.gov;* telephone: (781) 238–7116; fax: (781) 238–7199. The policy statement is available on the Internet at the following address: *http://www.faa.gov/certification/aircraft/enginepolicyby.htm.* If you do not have access to the Internet, you may request a copy of the policy by contacting the individual listed in this section.

SUPPLEMENTARY INFORMATION: The FAA published a notice in the **Federal Register** on August 23, 2001 (66 FR 44431) that announced the availability of the proposed policy and invited interested parties to comment.

Background

This policy establishes a uniform approach for Aircraft Certification Offices (ACOs) to evaluate PMA applications for both critical and life-limited propeller parts. This policy does not establish new requirements.

(**Authority:** 49 U.S.C. 106(g), 40113, 44701–44702, 44704.)

Issued in Burlington, Massachusetts, on December 17, 2001.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–6127 Filed 3–18–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice to Rescind Notice of Intent To Prepare an Environmental Impact Statement: Macon County, MO

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Rescind notice of intent to prepare an environmental impact statement.

SUMMARY: The FHWA is issuing this notice to advise the public that we are rescinding the notice of intent (NOI) to prepare an environmental impact statement (EIS) for improvements that were proposed to the transportation system in Macon County, Missouri.

FOR FURTHER INFORMATION CONTACT: Donald L. Neumann, Programs Engineer, FHWA Division Office, 209 Adams Street, Jefferson City, MO 65101; Telephone (573) 636–7104 or Mr. Dave Nichols, Director of Project Development, Missouri Department of Transportation, PO Box 270, Jefferson City, MO 65102, Telephone: (573) 751–4586.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Missouri Department of Transportation (MoDOT), is rescinding the NOI to prepare an EIS for a project that has been proposed to improve the transportation system in Macon County, Missouri. The NOI is being rescinded because FHWA and MoDOT have determined that the project will have no significant impacts and is not controversial so an environmental assessment will be appropriate for this project.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning

and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: March 1, 2002.

Donald L. Neumann,

Programs Engineer, Jefferson City.

[FR Doc. 02–6501 Filed 3–18–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Consent of Surety.

DATES: Written comments should be received on or before May 20, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Mary Wood, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8185.

SUPPLEMENTARY INFORMATION:

Title: Consent of Surety.

OMB Number: 1512–0078.

Form Number: ATF F 1533 (5000.18).

Abstract: A consent of surety is executed by both the bonding company and a proprietor and acts as a binding legal agreement between the two parties to extend the terms of a bond. The bond is necessary to cover specific liabilities on the revenue produced from untaxpaid commodities. The consent of surety is filed with ATF and a copy is retained by ATF as long as it remains current and in force.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 2,000.

Estimated Total Annual Burden Hours: 2,000.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 8, 2002.

William T. Earle,

Associate Director (Management) CFO.

[FR Doc. 02–6584 Filed 3–18–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application and Permit For Importation of Firearms, Ammunition and Implements of War.

DATES: Written comments should be received on or before May 20, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Derek O. Ball, Firearms and Explosives Imports Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8320.

SUPPLEMENTARY INFORMATION:

Title: Application and Permit For Importation of Firearms, Ammunition and Implements of War.

OMB Number: 1512–0017.

Form Number: ATF F 6 (5330.3A) Part 1.

Abstract: This information collection is needed to determine whether firearms, ammunition and implements of war are eligible for importation into the United States. The form is used to secure authorization to import such articles. All persons who desire to import such articles except for persons who are members of the United States Armed Forces must complete this form.

Current Actions: There are no changes to this information and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Individuals or households, business or other for-profit, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 11,000.

Estimated Total Annual Burden Hours: 5,500.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital

or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 8, 2002.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 02–6585 Filed 3–18–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Environmental Information and Supplemental Information on Water Quality Considerations Under 33 U.S.C. 1341 (a).

DATES: Written comments should be received on or before May 20, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Linda Wade-Chapman, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8181.

SUPPLEMENTARY INFORMATION:

Title: Environmental Information and Supplemental Information on Water Quality Considerations Under 33 U.S.C. 1341 (a).

OMB Number: 1512–0100.

Form Number: ATF F 5000.29 and ATF F 5000.30.

Abstract: The environmental forms are necessary in order to comply with the provisions of the National Environmental Policy Act, 42 U.S.C. 4332 (ATF F 5000.29) and the Clean Water Act, 33 U.S.C. 1341 (a) (ATF F 5000.30). Information regarding solid and liquid waste, air pollution, noise, etc. as collected on ATF F 5000.29 is evaluated to determine if a formal environmental impact statement or an environmental permit is necessary for a proposed operation. The environmental type information is collected from manufacturers, namely distilled spirits plants, wineries, breweries, and tobacco products factories. ATF F 5000.30 is also submitted by manufacturers but only those who discharge a solid or liquid effluent into navigable waters. Applicants are required to describe any biological, chemical, thermal, or other characteristic of the discharge as well as any methods or equipment used to monitor the condition of the discharge. Based upon this data, ATF makes a determination as to whether a certification or waiver by the applicable State water quality agency is required. Should a manufacturer be required to submit both forms (ATF F 5000.29 and ATF F 5000.30) they may incorporate by reference any redundant information especially regarding solid and waste. The record retention period for this information collection is 15 years after discontinuance of business for distilled spirits plants having production facilities. All others, 4 years after discontinuance of business.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 8,000.

Estimated Total Annual Burden Hours: 4,400.

Request for comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 8, 2002.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 02–6586 Filed 3–18–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application for Enrollment to Practice Before the Bureau of Alcohol, Tobacco and Firearms.

DATES: Written comments should be received on or before May 20, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Rosa M. Jeter, Market Compliance Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8123.

SUPPLEMENTARY INFORMATION:

Title: Application for Enrollment to Practice Before the Bureau of Alcohol, Tobacco and Firearms.

OMB Number: 1512–0418.

Form Number: ATF F 5000.12.

Abstract: The application to practice before the Bureau of Alcohol, Tobacco and Firearms is necessary so that the Bureau may evaluate the qualification of applicants in order to assure only competent, reputable persons are authorized to represent claimants. There is no recordkeeping requirement for the respondent.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 8.

Estimated Total Annual Burden Hours: 2.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 13, 2002.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 02–6587 Filed 3–18–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations of Terrorism-Related Blocked Persons

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: Notice is hereby given of the designation of additional persons whose property and interests in property have been blocked pursuant to Executive Order 13224 of September 23, 2001, pertaining to persons who commit, threaten to commit, or support terrorism.

DATES: The designations by the Secretary of the Treasury of additional persons whose property and interests in property have been blocked pursuant to Executive Order 13224 were variously effective on November 7, 2001, December 4, 2001, December 20, 2001, or January 9, 2002, as reflected in the separate lists set forth in this notice.

FOR FURTHER INFORMATION CONTACT: Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220, tel.: 202/622–2520.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

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Background

On September 23, 2001, President Bush issued Executive Order 13224 (the ''Order'') imposing economic sanctions on persons who commit, threaten to commit, or support certain acts of terrorism. In an annex to the Order, President Bush identified 12 individuals and 15 entities whose assets are blocked pursuant to the Order (66 FR 49079, September 25, 2001). The property and interests in property of an additional 33 individuals and 6 entities were blocked pursuant to determinations by the Secretary of State and the Secretary of the Treasury effective October 12, 2001, referenced in a **Federal Register** document published by the Office of Foreign Assets Control, Department of the Treasury (66 FR 54404, October 26, 2001).

Further Additional Determinations. Pursuant to subsections 1(c) and 1(d) of the Order, further additional persons have been determined by the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General: to be owned or controlled by, or to act for or on behalf of, persons listed in the annex to the Order or designated pursuant to subsection 1(b), 1(c), or 1(d)(i) of the Order; to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, acts of terrorism or persons listed on the annex or designated pursuant to the Order; or to be otherwise associated with persons listed on the annex to the Order or designated pursuant to subsection 1(b), 1(c), or (1)(d)(i) of the Order. These additional determinations are set forth in the lists below. In addition, further determinations made on October 31, 2001, December 18, 2001, and December 31, 2001, by the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, under subsection 1(b) of the Order, are addressed in a separate notice published elsewhere in this issue of the **Federal Register**.

All property and interests in property of any listed person that are in the United States, that come within the United States, or that are or come within the possession or control of United States persons, including their overseas branches, are blocked, and may not be transferred, paid, exported, withdrawn or otherwise dealt in, and all transactions by U.S. persons or within the United States in property or interests in property of any listed person are prohibited unless otherwise authorized by the Office of Foreign Assets Control or exempted by statute.

The designations by the Secretary of the Treasury of further additional persons whose property and interests in property have been blocked pursuant to Executive Order 13224 were variously effective on the relevant date of determination (November 7, 2001, December 4, 2001, December 20, 2001 or January 9, 2002), as reflected under separate headings in the lists below.

In Section 10 of the Order, the President determined that because of the ability to transfer funds or assets instantaneously, prior notice to persons listed in the Annex to, or determined to be subject to, the Order who might have a constitutional presence in the United States, would render ineffectual the blocking and other measures authorized in the Order. The President further determined that no prior notification of a determination need be provided to any person who might have a constitutional presence in the United States. In furtherance of the objectives of the Order, the Secretary of the Treasury has determined that no prior notice should be afforded to the subjects of the determinations reflected in this notice because to do so would give the subjects that opportunity to evade the measures described in the Order and, consequently, render those measures ineffectual toward addressing the national emergency declared in the Order.

The lists of additional designations follow:

Designations of November 7, 2001 (Entities)

AARAN MONEY WIRE SERVICE INC., 1806 Riverside Avenue, 2nd Floor, Minneapolis, Minnesota.

AL BARAKA EXCHANGE L.L.C., P.O. Box 3313, Deira, Dubai, United Arab Emirates; P.O. Box 20066, Dubai, United Arab Emirates.

AL-BARAKAAT, Mogadishu, Somalia; Dubai, United Arab Emirates.

AL-BARAKAAT BANK, Mogadishu, Somalia.

AL-BARAKAAT BANK OF SOMALIA (BBS) (a.k.a. BARAKAAT BANK OF SOMALIA), Mogadishu, Somalia; Bossaso, Somalia.

AL-BARAKAAT GROUP OF COMPANIES SOMALIA LIMITED (a.k.a. AL-BARAKAT FINANCIAL COMPANY), P.O. Box 3313, Dubai, United Arab Emirates; Mogadishu, Somalia.

AL-BARAKAAT WIRING SERVICE, 2940 Pillsbury Avenue, Suite 4, Minneapolis, Minnesota 55408.

AL-BARAKAT FINANCE GROUP, Dubai, United Arab Emirates; Mogadishu, Somalia.

AL-BARAKAT FINANCIAL HOLDING COMPANY, Dubai, United Arab Emirates; Mogadishu, Somalia.

AL-BARAKAT GLOBAL TELECOMMUNICATIONS (a.k.a. BARAKAAT GLOBETELCOMPANY), P.O. Box 3313, Dubai, United Arab Emirates; Mogadishu, Somalia; Hargeysa, Somalia.

AL-BARAKAT INTERNATIONAL (a.k.a. BARACO CO.), Box 2923, Dubai, United Arab Emirates.

AL-BARAKAT INVESTMENTS, P.O. Box 3313, Deira, Dubai, United Arab Emirates.

AL TAQWA TRADE, PROPERTY AND INDUSTRY COMPANY LIMITED (f.k.a. AL TAQWA TRADE, PROPERTY AND INDUSTRY) (f.k.a. AL TAQWA TRADE, PROPERTY AND INDUSTRY ESTABLISHMENT) (f.k.a. HIMMAT ESTABLISHMENT), c/o Asat Trust Reg., Altenbach 8, 9490 Vaduz FL, Liechtenstein.

ASAT TRUST REG., Altenbach 8, 9490 Vaduz FL, Liechtenstein.

BANK AL TAQWA LIMITED (a.k.a. AL TAQWA BANK) (a.k.a. BANK AL TAQWA), P.O. Box N–4877, Nassau, Bahamas; c/o Arthur D. Hanna & Company, 10 Deveaux Street, Nassau, Bahamas.

BARAKA TRADING COMPANY, P.O. Box 3313, Dubai, United Arab Emirates.

BARAKAAT BOSTON, 266 Neponset Avenue, Apt 43, Dorchester, Massachusetts 02122–3224.

BARAKAAT CONSTRUCTION COMPANY, P.O. Box 3313, Dubai, United Arab Emirates.

BARAKAAT ENTERPRISE, 1762 Huy Road, Columbus, Ohio 43224–3550.

BARAKAAT GROUP OF COMPANIES, P.O. Box 3313, Dubai, United Arab Emirates; Mogadishu, Somalia.

BARAKAAT INTERNATIONAL, Hallbybacken 15, 70 Spanga, Sweden.

BARAKAAT INTERNATIONAL COMPANIES (BICO), Mogadishu, Somalia; Dubai, United Arab Emirates.

BARAKAAT INTERNATIONAL FOUNDATION, Box 4036, Spanga, Stockholm, Sweden; Rinkebytorget 1, 04 Spanga, Sweden.

BARAKAAT INTERNATIONAL, INC., 1929 South 5th Street, Suite 205, Minneapolis, Minnesota, U.S.A.

BARAKAAT NORTH AMERICA, INC., 925 Washington Street, Dorchester, Massachusetts; 2019 Bank Street, Ottawa, Ontario, Canada.

BARAKAAT RED SEA TELECOMMUNICATIONS, Bossaso, Somalia; Nakhiil, Somalia; Huruuse, Somalia; Raxmo, Somalia; Ticis, Somalia; Kowthar, Somalia; Noobir, Somalia; Bubaarag, Somalia; Gufure, Somalia; Xuuxuule, Somalia; Ala Aamin, Somalia; Guureeye, Somalia; Najax, Somalia; Carafaat, Somalia.

BARAKAAT TELECOMMUNICATIONS COMPANY LIMITED (a.k.a. BTELCO), Bakara Market, Dar Salaam Buildings, Mogadishu, Somalia; Kievitlaan 16, T'veld, Noord-Holland, The Netherlands.

BARAKAAT TELECOMMUNICATIONS COMPANY SOMALIA, LIMITED, P.O. Box 3313, Dubai, United Arab Emirates.

BARAKAT BANKS AND REMITTANCES, Mogadishu, Somalia; Dubai, United Arab Emirates.

BARAKAT COMPUTER CONSULTING (BCC), Mogadishu, Somalia.

BARAKAT CONSULTING GROUP (BCG), Mogadishu, Somalia.

BARAKAT GLOBAL TELEPHONE COMPANY, Mogadishu, Somalia; Dubai, United Arab Emirates.

BARAKAT POST EXPRESS (BPE), Mogadishu, Somalia.

BARAKAT REFRESHMENT COMPANY, Mogadishu, Somalia; Dubai, United Arab Emirates.

BARAKAT WIRE TRANSFER COMPANY, 4419 South Brandon Street, Seattle, Washington.

BARAKO TRADING COMPANY LLC, P.O. Box 3313, Dubai, United Arab Emirates.

GLOBAL SERVICE INTERNATIONAL, 1929 5th Street, Suite 204, Minneapolis, Minnesota.

HEYATUL ULYA, Mogadishu, Somalia.

NADA MANAGEMENT ORGANIZATION SA (f.k.a. AL TAQWA MANAGEMENT ORGANIZATION SA), Viale Stefano Franscini 22, CH–6900 Lugano TI, Switzerland.

PARKA TRADING COMPANY, P.O. Box 3313, Deira, Dubai, United Arab Emirates.

RED SEA BARAKAT COMPANY LIMITED, Mogadishu, Somalia; Dubai, United Arab Emirates.

SOMALI INTERNATIONAL RELIEF ORGANIZATION, 1806 Riverside Avenue, 2nd Floor, Minneapolis, Minnesota.

SOMALI INTERNET COMPANY, Mogadishu, Somalia.

SOMALI NETWORK AB (a.k.a. SOM NET AB), Hallybybacken 15, 70 Spanga, Sweden.

YOUSSEF M. NADA, Via Riasc 4, CH–6911 Campione d'Italia I, Switzerland.

YOUSSEF M. NADA & CO. GESELLSCHAFT M.B.H., Kaerntner Ring 2/2/5/22, 1010 Vienna, Austria.

Designations of November 7, 2001 (Individuals)

ABDULLKADIR, Hussein Mahamud, Florence, Italy.

ADEN, Abdirisak; Skaftingebacken 8, 163 67 Spanga, Sweden; DOB 01 June 1968.

ALI, Abbas Abdi, Mogadishu, Somalia.

ALI, Abdi Abdulaziz, Drabantvagen 21, 177 50 Spanga, Sweden; DOB 01 January 1955.

ALI, Yusaf Ahmed, Hallbybacken 15, 70 Spanga, Sweden; DOB: 20 November 1974.

AWEYS, Dahir Ubeidullahi, Via Cipriano Facchinetti 84, Rome, Italy.

AWEYS, Hassan Dahir (a.k.a. ALI, Sheikh Hassan Dahir Aweys) (a.k.a. AWES, Shaykh Hassan Dahir), DOB: 1935; Citizen: Somalia.

HIMMAT, Ali Ghaleb, Via Posero 2, CH–6911 Campione d'Italia, Switzerland; DOB: 16 June 1938; POB: Damascus, Syria; Citizen: Switzerland and Tunisia.

HUBER, Albert Friedrich Armand (a.k.a. HUBER, Ahmed), Mettmenstetten, Switzerland; DOB: 1927.

HUSSEIN, Liban, 925 Washington Street, Dorchester, Massachusetts; 2019 Bank Street, Ottawa, Ontario, Canada.

JAMA, Garad (a.k.a. NOR, Garad K.) (a.k.a. WASRSAME, Fartune Ahmed), 2100 Bloomington Avenue, Minneapolis, Minnesota; 1806 Riverside Avenue, 2nd Floor, Minneapolis, Minnesota; DOB: 26 June 1974.

JIM'ALE, Ahmed Nur Ali (a.k.a. JIMALE, Ahmad Ali) (a.k.a. JIM'ALE, Ahmad Nur Ali) (a.k.a. JUMALE,

Ahmed Nur) (a.k.a. JUMALI, Ahmed Ali), P.O. Box 3312, Dubai, United Arab Emirates; Mogadishu, Somalia.

KAHIE, Abdullahi Hussein, Bakara Market, Dar Salaam Buildings, Mogadishu, Somalia.

MANSOUR, Mohamed, (a.k.a. AL–MANSOUR, Dr. Mohamed), Ob. Heslibachstr. 20, Kusnacht, Switzerland; Zurich, Switzerland; DOB: 1928; POB: Egypt or United Arab Emirates.

MANSOUR–FATTOUH, Zeinab, Zurich, Switzerland.

NADA, Youssef, (a.k.a. NADA, Youssef M.) (a.k.a. NADA, Youssef Mustafa), Via Arogno 32, 6911 Campione d'Italia, Italy; Via Per Arogno 32, CH–6911 Campione d'Italia, Switzerland; Via Riasc 4, CH–6911 Campione d'Italia I, Switzerland; DOB: 17 May 1931 or 17 May 1937; POB: Alexandria, Egypt; Citizen: Tunisia.

Designations of December 4, 2001

AL–AQSA ISLAMIC BANK (a.k.a. AL–AQSA AL–ISLAMI BANK), P.O. Box 3753 al-Beireh, West Bank; Ramallah II 970, West Bank.

BEIT EL–MAL HOLDINGS (a.k.a. ARAB PALESTINIAN BEIT EL–MAL COMPANY; a.k.a. BEIT AL MAL HOLDINGS; a.k.a. BEIT EL MAL AL–PHALASTINI AL–ARABI AL–MUSHIMA AL–AAMA AL–MAHADUDA LTD.; a.k.a. PALESTINIAN ARAB BEIT EL MAL CORPORATION, LTD.), P.O. Box 662, Ramallah, West Bank.

HOLY LAND FOUNDATION FOR RELIEF AND DEVELOPMENT (f.k.a. OCCUPIED LAND FUND), 525 International Parkway, Suite 509, Richardson, Texas 75081, U.S.A.; P.O. Box 832390, Richardson, Texas 75083, U.S.A.; 9250 S. Harlem Avenue, Bridgeview, Illinois, U.S.A.; 345 E. Railway Avenue, Paterson, New Jersey 07503, U.S.A.; 12798 Rancho Penasquitos Blvd., Suite F, San Diego, California 92128 U.S.A.; Hebron, West Bank; Gaza; and other locations within the United States; U.S. FEIN: 95–4227517.

Designations of December 20, 2001 (Entity)

UMMAH TAMEER E–NAU (UTN), (a.k.a. Ummah Tameer I–Nau; a.k.a. Ummah Tamir I–Nau; a.k.a. Ummah Tamir E–Nau; a.k.a. Reconstruction of the Muslim Ummah; a.k.a. Reconstruction of the Islamic Community; a.k.a. Foundation for Construction; a.k.a. Reconstruction Foundation; a.k.a. Nation Building; a.k.a. Ummat Tamir-I-Pau; a.k.a. Ummat Tamir E–Nau), Street 13, Wazir Akbar Khan, Kabul, Afghanistan; 60–C, Nazim Ud Din Road, F 8/4 Islamabad, Pakistan.

Designations of December 20, 2001 (Individuals)

MAHMOOD, Sultan Bashir-Ud-Din (a.k.a. MAHMOOD, Sultan Bashiruddin; a.k.a. MEHMOOD, Dr. Bashir Uddin; a.k.a. MEKMUD, Sultan Baishiruddin), Street 13, Wazir Akbar Khan, Kabul, Afghanistan; alt. DOB 1937; alt. DOB 1938; alt. DOB 1939; alt. DOB 1940; alt. DOB 1941; alt. DOB 1942; alt. DOB 1943; alt. DOB 1944; alt. DOB 1945; nationality Pakistani.

MAJEED, Abdul (a.k.a. MAJEED, Chaudhry Abdul; a.k.a. MAJID, Abdul); DOB 15 April 1939; alt. DOB 1938; nationality Pakistani.

TUFAIL, Mohammed (a.k.a. TUFAIL, S.M.; a.k.a. TUFAIL, Sheik Mohammed); nationality Pakistani.

Designations of January 9, 2002 (Entities)

AFGHAN SUPPORT COMMITTEE (ASC) (a.k.a. AHYA UL TURAS; a.k.a. JAMIAT AYAT–UR–RHAS AL ISLAMIA; a.k.a. JAMIAT IHYA UL TURATH AL ISLAMIA; a.k.a. LAJNAT UL MASA EIDATUL AFGHANIA) Grand Trunk Road, near Pushtoon Garhi Pabbi, Peshawar, Pakistan; Cheprahar Hadda, Mia Omar Sabaqah School, Jalalabad, Afghanistan.

REVIVAL OF ISLAMIC HERITAGE SOCIETY (RIHS) (a.k.a. JAMIA IHYA UL TURATH; a.k.a. JAMIAT IHIA AL–TURATH AL–ISLAMIYA; a.k.a. REVIVAL OF ISLAMIC SOCIETY HERITAGE ON THE AFRICAN CONTINENT) Pakistan office; Afghanistan office; (office in Kuwait is NOT designated).

Designations of January 9, 2002 (Individuals)

AL–JAZIRI, Abu Bakr; Peshawar, Pakistan; nationality Algerian (individual).

AL–LIBI, Abd al-Mushin (a.k.a. ABU BAKR, Ibrahim Ali Muhammad) (individual).

Dated: January 15, 2002.

Loren L. Dohm,

Acting Director, Office of Foreign Assets Control.

Approved: January 23, 2002.

Jimmy Gurulé,

Under Secretary (Enforcement), Department of the Treasury.

[FR Doc. 02–3291 Filed 3–14–02; 3:48 pm]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209673–93]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–209673–93 (TD 8700), Mark to Market for Dealers in Securities (§§ 1.475(b)–4, and 1.475(c)–1).

DATES: Written comments should be received on or before May 20, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack, (202) 622–3179, or through the internet *(Larnice.Mack@irs.gov.)* Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Mark to Market for Dealers in Securities.

OMB Number: 1545–1496.

Regulation Project Number: REG–209673–93.

Abstract: Under section 1.475(b)–4, the information required to be recorded is required by the IRS to determine whether exemption from mark-to-market treatment is properly claimed, and will be used to make that determination upon audit of taxpayers' books and records. Also, under section 1.475(c)–1(a)(3)(iii), the information is necessary for the Service to determine whether a consolidated group has elected to disregard inter-member transactions in determining a member's status as a dealer in securities.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 3,400.

Estimated Time Per Respondents: 52 minutes.

Estimated Total Annual Burden Hours: 2,950.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 12, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–6482 Filed 3–18–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the New York Metro Citizen Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the New York Metro Citizen Advocacy Panel will be held in Brooklyn, New York.

DATES: The meeting will be held Wednesday, March 20, 2002.

ADDRESSES: Internal Revenue Service, 625 Fulton Street, Brooklyn, NY 11201.

FOR FURTHER INFORMATION CONTACT: Eileen Cain at 1–888–912–1227 or 718–488–3555.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Wednesday, March 20, 2002, 6 p.m. to 9:20 p.m. at the Internal Revenue Service, 625 Fulton Street, Brooklyn, NY 11201. For more information or to confirm attendance, notification of intent to attend the meeting must be made with Eileen Cain. Mrs. Cain can be reached at 1–888–912–1227 or 718–488–3555. The public is invited to make oral comments from 9 p.m. to 9:20 p.m. on Wednesday, March 20, 2002.

Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 718–488–3555, or write Eileen Cain, CAP Office, PO Box R, Brooklyn, NY 11201. The Agenda will include the following: various IRS issues. Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: March 6, 2002.

Cindy Vanderpool,

Program Manager, TAS.

[FR Doc. 02–6298 Filed 3–18–02; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0024]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to authorize VA to make deductions to pay premiums, loans and/or liens.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 20, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e–mail: *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0024'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Insurance Deduction Authorization (For Deduction from Benefit Payments), VA Form 29–888.

OMB Control Number: 2900–0024.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by insureds to authorize VA to make deductions from benefits payments to pay premiums, loans and/or liens on his or her insurance contract.

Affected Public: Individuals or households.

Estimated Annual Burden: 622 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3,732.

Dated: March 7, 2002.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 02–6537 Filed 3–18–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0606]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 18, 2002.

ADDRESSES: Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0606'' in any correspondence.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0606.''

SUPPLEMENTARY INFORMATION:

Title: Regulation for Submission of Evidence (Title 38 CFR 17.1C1(a)(2).

OMB Control Number: 2900–0606.

Type of Review: Extension of a currently approved collection.

Abstract: The purpose of this regulation is to authorize VA to bill ''reasonable charges'' instead of ''reasonable cost'' for medical care or services provided or furnished to a veteran for a non-service connected disability.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 15, 2002, at pages 2013–2014.

Affected Public: Business or other, Individuals or households, Not-for-profit institutions, Farms, and State, Local or Tribal government.

Estimated Annual Burden: 800 hours.

Estimated Average Burden Per Respondent: 2 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents: 400.

Dated: March 4, 2002.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 02–6538 Filed 3–18–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0120]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 18, 2002.

ADDRESSES: Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0120'' in any correspondence.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0120.''

SUPPLEMENTARY INFORMATION:

Title: Report of Treatment by Attending Physician, VA FL 29–551a.

OMB Control Number: 2900–0120.

Type of Review: Extension of a currently approved collection.

Abstract: This form letter is used to collect information from an attending physician to determine the insured's eligibility for disability insurance benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 24, 2002, at pages 3533–3534.

Affected Public: Individuals or households.

Estimated Annual Burden: 5,069 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 20,277.

Dated: March 4, 2002.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 02–6539 Filed 3–18–02; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 67, No. 53

Tuesday, March 19, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0032]

Guidance for Industry; Implementation of Section 755 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2002, Pub. L. No. 107–76 § 755(2001) Regarding Common or Usual Names for Catfish; Availability

Correction

In notice document 02–2753 beginning on page 5604, in the issue of Wednesday, February 6, 2002 make the following correction:

On page 5605, in the first column, in the first line, the web address, ''*http://www.cfsan.fda.gov/dms/guidance/html*'' should read ''*http://www.cfsan.fda.gov/~dms/guidance/html*''.

[FR Doc. C2–2753 Filed 3–18–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
March 19, 2002

Part II

Department of Transportation

Federal Motor Carrier Safety Administration

49 CFR Parts 368 and 387

Revision of Regulations and Application Form for Mexico-Domiciled Motor Carriers To Operate in United States Municipalities and Commercial Zones on the United States-Mexico Border; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 368 and 387

[Docket No. FMCSA–98–3297]

RIN 2126–AA33

Revision of Regulations and Application Form for Mexico-Domiciled Motor Carriers To Operate in United States Municipalities and Commercial Zones on the United States-Mexico Border

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: The FMCSA revises its regulations and form that relate to the issuance of Certificates of Registration to those Mexico-domiciled motor carriers (of property) that want to operate in the United States only within the municipalities adjacent to Mexico in Texas, New Mexico, Arizona, and California and within the commercial zones of such municipalities (''border zones''). This rule also revises FMCSA's regulations governing financial responsibility of motor carriers to accurately reflect the requirements placed on these Mexico-domiciled motor carriers. Other types of carriers that currently hold a Certificate of Registration (such as exempt carriers that operate beyond the border zones) must now apply under separate FMCSA regulations that we are issuing in an interim final rule published elsewhere in today's **Federal Register**. The revisions in this action are part of FMCSA's efforts to ensure the safe operation of Mexico-domiciled motor carriers in the United States. They will ensure that the FMCSA receives adequate information to assess a new applicant's safety program and its ability to comply with U.S. safety standards before it is registered to operate in the United States. The FMCSA will evaluate current certificate holders who re-file under these regulations to determine if they meet U.S. safety standards and should be permitted to continue operations within the border zones. As a result of these changes, the agency also will be better able to maintain an accurate census of registered carriers. Additionally, the regulations have been updated to reflect the transfer of motor carrier regulatory functions from the Federal Highway Administration (FHWA) to FMCSA.

EFFECTIVE DATE: This final rule is effective April 18, 2002.

FOR FURTHER INFORMATION CONTACT: Joanne Cisneros, (909) 653–2299, Transborder Office, FMCSA, P.O. Box 530870, San Diego, CA 92153–0870. Office hours are from 7:45 a.m. to 4:15 p.m., p.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Since 1982, significant limitations have been in place concerning operations by Mexico-domiciled motor carriers in the United States. A moratorium has existed on grants of operating authority under the jurisdiction of the former Interstate Commerce Commission (ICC). Access has been allowed only for certain motor carriers that fell outside the ICC's licensing jurisdiction. These carriers receive Certificates of Registration by filing Form OP–2 under the provisions of what is now 49 CFR part 368. Until the effective date of this rulemaking, Mexico-domiciled carriers eligible for Certificates of Registration were those operating solely within the border zones and certain motor private carriers and carriers of exempt goods who operated beyond the border zones.

Summary of the NPRM

The FMCSA published the notice of proposed rulemaking (NPRM) for this action on May 3, 2001 (66 FR 22328). We proposed to use the Form OP–2 (with substantial changes) and the issuance of Certificates of Registration only for those carriers whose operations are limited to the border zones. The FMCSA believes that despite the opportunity for Mexico-domiciled carriers to operate beyond the border zones, there are a substantial number of carriers that are most familiar with the Certificate of Registration and want to continue operating in a limited area.

We additionally proposed that all current holders of Certificates of Registration be required to file new forms with the FMCSA. Those carriers who wish to continue operating only in the border zones would file the Form OP–2 in accordance with the procedures in part 368. All other current holders of Certificates of Registration who want to operate beyond the border zones would file Form OP–1(MX) like all other Mexico-domiciled property carriers seeking the ability to operate under the implementation of the NAFTA entry provisions.

The FMCSA proposed to modify parts 368 and 387 and Form OP–2 as part of our implementation of the NAFTA cross-border access provisions. We asked for comments on our proposal to reissue all existing Certificates of Registration and to require current holders of Certificates of Registration to submit additional safety information about their operations.

The NPRM was one of three proposals related to carriers operating or seeking to operate between Mexico and the United States published in the May 3, 2001, **Federal Register**. The FMCSA made a conscious decision to propose retaining two different application forms and processes, the OP–2 and the OP–1(MX), under 49 CFR part 368 and part 365, respectively. We solicited comments on the need to maintain the Certificate of Registration process. A separate NPRM (66 FR 22371) proposed and sought comments on changes to Form OP–1(MX) and 49 CFR part 365. The third NPRM (66 FR 22415) explained the proposed safety monitoring system for Mexico-domiciled carriers operating in the United States. These three proposals are part of a coordinated effort to assess and monitor the safety performance of Mexico-domiciled carriers before and as they operate in the United States.

Discussion of Comments to the NPRM

In response to the three NPRMs relating to NAFTA implementation, the FMCSA received over 200 comments from motor carrier associations, safety advocates, environmental interest groups, law enforcement agencies, motor carriers, labor groups, State and local government agencies, economic and community development associations, and private citizens. More than 90 percent of the comments opposed the proposed safety monitoring system or the border opening. Most of the comments focused on the proposed safety monitoring system (66 FR 22415) and will be fully discussed elsewhere in today's **Federal Register**. It should be noted, however, that these and other comments urging a delay in the implementation of NAFTA assume that the regulations published today ''open the border'' or lift the current moratorium on the grant of operating authority. The regulations do neither. The President, not the FMCSA, has that authority pursuant to 49 U.S.C. 13902. The President has announced that the United States will comply with its NAFTA obligations regarding Mexico-domiciled motor carrier access in a manner that will not weaken motor carrier safety. The regulations help ensure motor carrier safety and provide an application process for Mexico-domiciled carriers seeking to operate within the United States.

A large percentage of the commenters addressed all three rules together in a single submission that was filed in one

or all three public dockets. We have carefully considered them and have revised the OP–2 application form and the regulations governing the application process as noted in the preamble sections titled ''Discussion of the Final Rule'' and ''Final Revisions to the Form OP–2.'' In this section, FMCSA discusses the comments that directly relate to the proposed changes in parts 368 and 387, as well as some comments that related to all the proposals.

The Friends of the Earth, Natural Resources Defense Council, Sierra Club, and Center for International Law (Friends of the Earth *et al.*) jointly commented that FMCSA is required to perform additional analysis to meet the requirements of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) and Executive Order 13045 (62 FR 19885, April 23, 1997), concerning the protection of children from environmental and health and safety risks. The International Brotherhood of Teamsters (Teamsters) also expressed this viewpoint. The Friends of the Earth *et al.* believe that 40 CFR 1501.3(b) requires that if DOT is not certain that an environmental impact statement is required, then it must first prepare an environmental assessment. Regarding compliance with Executive Order 13045, the Friends of the Earth *et al.* believe that this action presents increased pollution and safety concerns that pose a disproportionate risk to children.

The FMCSA is preparing an agency order to meet the requirements of DOT Order 5610.1C (that establishes the Department of Transportation's policy for compliance with NEPA by the Department's administrations). The FMCSA has conducted a programmatic environmental assessment (PEA) of the three rulemakings in accordance with the DOT Order and the regulations of the Council on Environmental Quality. A discussion of the PEA and its findings and the FMCSA's responsibilities under E.O. 13045 is presented later in the preamble under ''Regulatory Analyses and Notices.'' A copy of the PEA is in the docket to this rulemaking.

The Attorney General for the State of California submitted a comment in which he asserted that the FMCSA would be required to perform a ''conformity determination'' pursuant to the Clean Air Act (CAA), before finalizing these rulemakings. Under the CAA, Federal agencies are prohibited from supporting in any way, any activity that does not conform to an approved State Implementation Plan (SIP), (42 USC 7006). EPA regulations implementing this provision require Federal agencies to determine whether an action would conform with the SIP (a ''conformity determination''), before taking the action (40 CFR 93.150). The Attorney General asserts that the FMCSA must make a conformity determination before taking final action to implement regulations that would allow Mexican trucks to operate beyond the border. The Attorney General provided technical information to support his assertion that allowing Mexican trucks to operate beyond the border would likely not be in conformity with California's SIP.

We have reviewed our obligations under the CAA and believe that we are in compliance with the general conformity requirements as implemented by the U.S. Environmental Protection Agency (EPA). EPA's implementing regulations exempt certain actions from the general conformity determination requirements. Actions which would result in no increase in emissions or clearly a de minimis increase, such as rulemaking (40 CFR 93.153(c)(iii)), are exempt from requiring a conformity determination. In addition, actions which do not exceed certain threshold emissions rates set forth in 40 CFR 93.153(b) are also exempt from the conformity determination requirements. The FMCSA rulemakings meet both of these exemption standards. First, as noted elsewhere in this preamble to this rule, the actions being taken by the FMCSA are rulemaking actions to improve FMCSA's regulatory oversight, not an action to modify the moratorium and allow Mexican trucks to operate beyond the border. Second, the air quality impacts from each of the FMCSA's rules neither individually nor collectively exceed the threshold emissions rates established by EPA (see Appendix C of the Environmental Assessment accompanying these rulemakings for a more detailed discussion of air quality impacts). As a result, we believe that FMCSA's rulemaking actions comply with the CAA requirements and that no conformity determination is required.

The Laredo (Texas) Chamber of Commerce, the City of Laredo, and the Laredo Development Foundation all submitted comments that specifically addressed the proposed regulations for Mexico-domiciled carriers that operate solely within the border zones. They are concerned that no additional requirements be put in place to slow down traffic through the border entry facilities. The City of Laredo believes that requiring drayage operations drivers, who operate solely within the border zones, to speak English, as well as understand English signage, is unnecessary.

The FMCSA believes that all motor carriers and drivers under its jurisdiction must meet all applicable motor carrier safety regulations when operating within the United States, regardless of the nature of operations. Since many of the Mexican short-haul or ''drayage'' drivers have been operating within the border zones for some time, most of them already comply with the English language proficiency requirements established for all commercial drivers operating in the United States under 49 CFR 391.11.

The Chamber of Commerce (COC) and Teamsters support the proposal to maintain a separate application form and procedures for Mexico-domiciled carriers that operate solely within the border zones. The COC does not want the Mexican short-haul operations to be identified together with long-haul operations operating beyond the border zones.

On the other hand, the Commercial Vehicle Safety Alliance (CVSA), the Camara Nacional del Autotransporte de Cargo (CANACAR) and American Trucking Associations, Inc. (ATA) recommend a single application form and procedures. CVSA recommends combining the OP–2 and OP–1(MX) forms because they are virtually identical. CANACAR believes that the proposed rules, in creating a distinction between applicants who seek to operate only in the border zones and those that seek to operate beyond the border zones, are in conflict with the implementation schedule established in the annex to NAFTA Chapter XII. The fourth phase of the implementation schedule was to allow Mexico-domiciled property carriers to operate from anywhere in Mexico to any point in the United States. CANACAR believes that the proposals set forth in the NPRM to this action appear to violate this principle.

The FMCSA is maintaining a separate registration system for Mexico-domiciled drayage operations, in part, so that we can maintain a more accurate census of these carriers, better assess their safety trends and operational characteristics, and track the impact of opening the border on dedicated drayage operations. Maintaining a separate Certificate of Registration will also enable those Mexico-domiciled carriers who wish to continue limited operations within the border zones to do so without incurring extra expenses for such things as mandatory continuous insurance coverage and additional fees for beyond border zone operations. This rule does not violate the fourth phase of the NAFTA implementation schedule

because it does not prohibit current holders of Certificates of Registration from requesting the broader operating authority available to Mexico-domiciled carriers under part 365 (as provided in an interim final rule published elsewhere in today's **Federal Register**).

The Teamsters support the proposal to require all current holders of Certificates of Registration to re-register, but believe that the one-year time period in which current holders of Certificates of Registration must re-file an OP–2 is too long. The Teamsters acknowledge the need to allow currently operating carriers sufficient time to prepare the application form but recommend that the re-registration period be shortened to 6 months.

The FMCSA believes that a longer re-registration period is required to permit border-zone carriers to continue operating within the border zones while modifying their vehicle fleets to comply with an FMCSA proposed rule published elsewhere in today's **Federal Register**. This rule would require that all commercial vehicles operated in the United States display labels certifying compliance with the Federal Motor Vehicle Safety Standards (FMVSS). However, to avoid disrupting existing border zone operations, the rule would allow border-zone carriers to operate vehicles within the border zone without a certification label for 24 months after the effective date of the rule, provided these vehicles were operated within the border zones before the rule's effective date. The expanded registration period will also provide adequate time to process the large number of applications anticipated. Thus, the final rule provides for an 18-month re-registration requirement.

The Owner-Operator Independent Drivers Association (OOIDA) commented in favor of the current system for Certificates of Registration that does not include publication of applications in the FMCSA Register.

However, the Teamsters oppose proposed § 368.6(f), which states that FMCSA will not provide notice of OP–2 filings in the **Federal Register** or FMCSA Register or permit comments, protests, or public hearings regarding such filings. This section is essentially a recodification of the last three sentences in former § 368.3(a). Applications for Certificates of Registration have not been subject to a public notice and protest requirement since procedures for handling such applications were first established by the ICC in 1985. The predecessor to part 368, 49 CFR part 1171, expressly prohibited public protests and oral hearings. Only the Department of Transportation was permitted to challenge an application. When the authority to issue Certificates of Registration was transferred to DOT effective January 1, 1996, part 1171 was adopted by the Federal Highway Administration and redesignated as part 368 without substantive change, except that the DOT intervention provision was removed as no longer necessary.

Based on 16 years experience in administering the border zone registration procedures, we are not convinced that providing a new right of public protest will measurably impact public safety. Operations under these rules will be confined to a limited geographical territory and we will be carefully scrutinizing border zone carriers through the application process and during the 18-month provisional operating period following issuance of the Certificate of Registration. Under these circumstances, we do not believe that it is necessary to change the regulations to accommodate the Teamsters' concerns.

The Citizens for Reliable and Safe Highways (CRASH) commented that safety audits of all Mexico-domiciled carriers must be conducted before they are allowed to operate in the United States. FMCSA received the same comment from many private citizens who identified themselves as allied with CRASH. The CVSA, Automobile Association of America (AAA), American Association of Motor Vehicle Administrators (AAMVA), Public Citizen, Transportation Consumer Protection Council, and Advocates for Highway and Auto Safety (AHAS) all commented that a paper-based system for allowing Mexican vehicles to cross the border was insufficient and recommended safety audits before allowing Mexico-domiciled carriers to operate in the United States.

The FMCSA does not agree that pre-operating safety audits are a necessary addition to the on-going process of issuing Certificates of Registration. Mexico-domiciled carriers have been conducting drayage operations within the border zones for more than 19 years. They are already familiar with U.S. motor carrier safety standards. The FMCSA will verify the information provided by OP–2 applicants using information from Mexican and U.S. government databases. In addition, OP–2 applicants will also be subject to a safety monitoring program, including a safety audit conducted within the 18-month provisional operating period (as fully described in an interim final rule published elsewhere in today's **Federal Register**).

On the other hand, long-haul operations within the United States by Mexico-domiciled carriers have not been authorized for some time. Mexico-domiciled applicants for long-haul authority will likely accrue more vehicle miles over a larger geographical territory than drayage operators and are less familiar with U.S. safety standards. For these reasons, section 350 of the 2002 DOT Appropriations Act (Pub. L. 107–87) requires FMCSA to subject long-haul carriers, but not border-zone carriers, to pre-authority safety examinations before being granted provisional operating authority to begin operations within the United States.

A company that rents recyclable pallets and plastic containers (CHEP USA), Free Trade-San Antonio, and The National Private Truck Council commented in favor of the proposed regulations.

United Parcel Service (UPS) commented that the application and regulations for Mexico-domiciled carriers requesting Certificates of Registration should identify express delivery as a separate kind of carrier operation. UPS explains that this distinction would enable the United States to accelerate the timeline for lifting the moratorium for express delivery services, without awaiting action on general trucking.

We do not see the need at this time for the rules to distinguish between express delivery services and general trucking services. We do not expect that the moratorium will be lifted for express delivery services before the lifting of the moratorium on general trucking. In addition, the United States maintains a reservation under the NAFTA on the transportation of goods other than international cargo between points in the United States, and the reservation covers both express delivery services and other motor carrier services.

In response to comments about the need for ensuring that vehicles operated by Mexico-domiciled motor carriers comply with the applicable FMVSSs, the FMCSA has published elsewhere in today's **Federal Register** an NPRM that would require all motor carriers operating in the United States to use commercial motor vehicles that display a label certifying compliance with all applicable FMVSSs in effect on the date of manufacture. The FMCSA will enforce these safety standards through pre-authorization safety examinations of Mexican long-haul carriers and roadside inspections of all Mexico-domiciled carriers, including inspections at the border. The FMCSA's State partners will accomplish enforcement through roadside and border inspections.

Roadside inspections provide a means of ensuring that vehicles meet the applicable FMVSSs in effect on the date the vehicle was manufactured.

Title 49 CFR part 393 of the Federal Motor Carrier Safety Regulations (FMCSRs) currently includes cross-references to most of the FMVSSs applicable to heavy trucks and buses. The rules require that motor carriers operating in the United States, including Mexico-domiciled carriers, must maintain the specified safety equipment and features that the National Highway Traffic Safety Administration (NHTSA) requires vehicle manufacturers to install. Failure to maintain these safety devices or features is a violation of the FMCSRs. If the violations are discovered during a roadside inspection, and they are serious enough to meet the current out-of-service criteria used in roadside inspections (i.e., the condition of the vehicle is likely to cause an accident or mechanical breakdown), the vehicle would be placed out of service until the necessary repairs are made. The FMCSA also has the option of imposing civil penalties for violations of 49 CFR part 393. Any FMVSS violations that involve noncompliance with the standards presently incorporated into part 393 could subject motor carriers to a maximum civil penalty of $10,000 per violation. If the FMCSA determines that Mexico-domiciled carriers are operating vehicles that do not comply with the applicable FMVSSs, this information could be used to take appropriate enforcement action for making a false certification on the application for operating authority.

In conjunction with our NPRM that would require all commercial motor vehicles operating in the United States to have FMVSS certification labels, NHTSA is taking three separate actions relating to the certification label. The first action is publication of a draft policy statement that will permit vehicle manufacturers to retroactively apply a label to a commercial motor vehicle certifying that the vehicle complied with all applicable FMVSSs in effect at the time it was originally manufactured. NHTSA recognizes that there are many commercial motor vehicles used by motor carriers in Mexico and Canada that were manufactured in accordance with the FMVSSs, but were not certified as complying with those standards because the vehicles were manufactured for sale and use in Canada or Mexico. NHTSA will, therefore, permit retroactive certification, but only if the manufacturer has sufficient basis for doing so.

NHTSA is also publishing two NPRMs relating to FMVSS certification requirements. One proposes recordkeeping requirements for foreign manufacturers that retroactively certify vehicles; the other proposes to codify, in 49 CFR part 591, NHTSA's long-standing interpretation of the term ''import,'' as used in the National Traffic and Motor Vehicle Safety Act of 1966, Public Law 89–563, to include bringing a commercial motor vehicle into the United States for the purpose of transporting cargo or passengers.

Discussion of the Final Rule

The FMCSA has made changes in the final rule to the proposed revisions to part 368, based on the comments, section 350 of the 2002 DOT Appropriations Act, and our own review of the proposal.

First, § 368.3 has been revised to allow both hard-copy and electronic submission of required information on designation of process agents (Form BOC–3) as part of the application process. The FMCSA currently allows only process agent services to electronically file the Form BOC–3. If a carrier elects to use a process agent service, it must include a letter to that effect with the Form OP–2 and ensure that the service electronically files the Form BOC–3 with the FMCSA. Otherwise, the hardcopy Form BOC–3 must accompany the application. The carrier may not begin operations until the Form BOC–3 has been filed with the FMCSA.

Second, the wording of § 368.5 has been revised to make clear that a current Certificate of Registration remains valid only until the FMCSA acts on an application for re-registration in the same manner that it will act on new applications.

The FMCSA has revised the title of § 368.6 in both the table of sections and the regulatory text to ''FMCSA action on the application'' to accurately reflect how the FMCSA will consider and act on each application. The section now provides that the FMCSA will validate all data and certifications in an application with information in its own databases and in the appropriate databases of the Mexican Government to which it has access as part of the NAFTA implementation process. The FMCSA will issue a provisional Certificate of Registration if it determines that the application is consistent with the FMCSA's safety fitness policy. We will also assign a distinctive USDOT Number that distinguishes the carrier as a Mexico-domiciled carrier authorized to operate solely within the border zones. The provisional Certificate of Registration cannot become permanent for at least 18 months, until the carrier has successfully completed the safety monitoring program, including a safety audit.

Section 368.7 has been modified to require that the copy of the Certificate of Registration carried on board the vehicle be made available upon request to authorized inspectors and enforcement officers.

Finally, the FMCSA has revised § 387.7 to more accurately describe those Mexico-domiciled carriers excepted from certain financial responsibility requirements. These carriers operating solely in municipalities in the United States on the U.S.-Mexico international border or within the commercial zones of such municipalities may obtain insurance coverage for periods of 24 hours or longer rather than continuous coverage.

Final Revisions to the Form OP–2

The final rule reflects numerous typographical corrections and adjustments to the OP–2 application form to make it consistent with the OP–1(MX) form. All requests for supplemental information that must accompany the application are in bold typeface so that they are conspicuous to the applicant. The substantive revisions are discussed below.

The OP–2 application instructions have been revised to discontinue the requirement that applicants submit Internal Revenue Service (IRS) Form 2290, Schedule 1 (Schedule of Heavy Highway Vehicles) with the OP–2 application. Unlike the OP–2 registration procedure, taxes imposed by 26 U.S.C. 4481 are assessed annually. The IRS Form 2290 would only provide evidence of compliance for the current year. However, the applicant must still certify compliance with 26 U.S.C. 4481 under Section VII of the application.

The instructions clarify the definition of ''applicant'' for purposes of determining who must sign the various Certifications and the Section VIII Application Oath.

The instructions caution applicants to enter only the city code and telephone numbers when listing Mexican telephone numbers on the form because previous applicants often submitted invalid or incomplete telephone numbers.

Insurance instructions notify applicants that they must carry a current DOT MCS–90 and evidence of insurance on board the vehicle when operating within the United States.

The information on how to receive additional assistance in completing the

Forms OP–2 and MCS–150 was revised to list a toll-free telephone number accessible from Mexico. We also updated the information for obtaining assistance with hazardous materials registration procedures and regulations.

The form instructions state that applicants that use a process agent service to designate multiple agents for service of process must attach a letter to the application informing the FMCSA of this option. The applicant must also ensure that the service electronically files the Form BOC–3 with the FMCSA within 90 days of the submission of the OP–2 application. The applicant is also notified that it may not begin operations until the Form BOC–3 has been filed with FMCSA.

The FMCSA has added two questions in Section IA regarding whether an applicant has held provisional operating authority or a provisional Certificate of Registration that was revoked. If the applicant answers yes to this question, the applicant must explain how it has corrected the deficiencies that resulted in the revocation, explain what effectively functioning basic safety management systems it now has in place, and provide all information and documents that support its case.

The FMCSA has corrected references in Section IA, and in the corresponding instructions, to an ''SCT registration number.'' An applicant must be registered with the Mexican Government's Secretaria de Comunicaciones y Transportes (SCT) to be issued a Certificate of Registration. However, the SCT does not issue an SCT registration number. It uses the RFC number, a Mexican Federal Taxpayer Registration identifier issued by a separate Government agency, to track the carrier's information in the SCT database. A company is issued a Registro Federal de Contribuyente; individuals are issued a Registro Federal de Causante. The applicant must complete Question 5a under Section IA based upon the applicant's form of business: (1) If the applicant is a sole proprietorship, enter the Registro Federal de Causante; (2) all other business forms should complete Question 5a using the Registro Federal de Contribuyente.

We have deleted a redundant question regarding the applicant's domicile from Section IA and Ownership and Control information from Section II. This information was used to substantiate claims that a carrier was U.S.-owned or controlled and therefore, eligible to operate beyond the border zones under a Certificate of Registration. With the implementation of NAFTA's access liberalization provisions, Mexico-domiciled carriers applying to operate beyond the border zones will no longer file the OP–2 form.

Several safety certifications have been modified or added to Section V. We have added a single safety certification for applicants that are exempt from the Federal Motor Carrier Safety Regulations because of the weight of their vehicles and because they will not transport hazardous materials (as was discussed in the proposed form instructions but inadvertently omitted from the proposed form). These applicants must certify that they will observe safe operating practices and comply with applicable State, local and tribal safety laws.

Under Driver Qualifications, applicants must certify, consistent with 49 CFR 391.23, that they will investigate their drivers' 3-year employment and driving histories. The certification statement concerning the need for carriers to establish a system and instructions for drivers to report criminal convictions has been removed. Current regulations only require domestic drivers to report violations of motor vehicle traffic laws and ordinances. The certification statement relating to the use of properly licensed drivers has been modified to require that the driver's Licencia Federal de Conductor is registered in the SCT database.

The four certification statements proposed under certification section V.8, pertaining to requirements that must be in place once operations within the United States have begun, have been modified to emphasize that the requirements apply only after the Mexico-domiciled carrier has begun operations within the United States and have been integrated into the Hours of Service, Driver Qualifications, and Vehicle Condition certification sections, as appropriate.

In response to comments from ATA, Teamsters, OOIDA, and the Transportation Trades Department of the AFL–CIO, we have extensively revised the Hazardous Materials (HM) and Cargo Tank certification statements. The HM training certification was modified to cite the relevant HM training regulations (49 CFR part 172, subpart H and 49 CFR 177.816) and the specific hazardous materials safety compliance information that must accompany the application.

We reworded the certification statement regarding the establishment of a system and procedures for inspecting, repairing and maintaining ''vehicles for HM transportation in a safe condition.'' The Hazardous Materials Regulations (HMR) require a system and procedures for inspection, repair and maintenance of reusable hazardous materials packages in a safe condition. The vehicle inspection, repair and maintenance requirement is covered in the Vehicle Condition certification statements.

We added a new certification statement requiring carriers to ensure that all HM trucks are marked and placarded in compliance with 49 CFR part 172, subparts D and F.

The HM registration certification statement, which is not restricted to Cargo Tank carriers, has been corrected and moved to the Hazardous Materials section.

The Section VII—Compliance Certification statement concerning process agent(s) has been modified to replace the phrase ''judicial filings and notices'' with ''filings and notices.'' A new Compliance Certification statement has been added to ensure those Mexico-domiciled carriers whose registration has been suspended or revoked from operating any motor vehicle in the United States are not reapplying for operating authority or a Certificate of Registration during the period of suspension or sooner than 30 days after the date of revocation. A signature line has been placed beneath the Compliance Certification statements, consistent with Section V—Safety Certifications and Section VI—Household Goods Arbitration Certifications.

Certain other changes were made to the Section—VII Compliance Certifications after discussions with the U.S. Department of Labor and the U.S. Environmental Protection Agency. The proposed Form OP–2 included a certification that the applicant is willing and able to comply with United States labor laws. Although the certification is included in a section that is prefaced by the direction ''All applicants must certify as follows:'', the instructions for the form, after first stating that FMCSA considers compliance with labor laws to be ''extremely important,'' then indicate that ''registration will not be withheld based solely on the failure by an applicant to certify that it is willing and able to comply with such [DOL and OSHA] requirements * * *.'' The FMCSA has removed those certification statements and the accompanying instructions. We have added new language that compliance with all pertinent Federal, State, local and tribal statutory and regulatory requirements, including labor and environmental laws, is mandatory. Such compliance includes producing requested records for review and inspection, and that inspectors of the Immigration and

Naturalization Service at the port of entry must determine the driver of the vehicle meets the requirements under the Immigration and Nationality Act, 8 U.S.C. 1101 *et seq.* The statements do not require certification—they are informational in nature—and have been placed after the signature line.

The Filing Fee Policy and Computation Box that formerly appeared in the form instructions have been moved to the back of the form because a carrier cannot provide filing fee information until completing Section III—Types of Registration. The fee policy also discloses that the FMCSA will place a 30-day hold on the application if the filing fee is paid by personal check.

Finally, FMCSA will translate the form into Spanish for applicants to understand what each question asks and what types of answers they need to provide.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and Department of Transportation Regulatory Policies and Procedures

The FMCSA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866, and is significant within the meaning of Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979) because of public interest. It has been reviewed by the Office of Management and Budget. However, it is anticipated that the economic impact of the revisions in this rulemaking would be minimal. The new or revised Form OP–2 is intended to foster and contribute to safety of operations, adherence to U.S. law and regulations, and compliance with U.S. insurance and tax payment requirements on the part of Mexico-domiciled carriers.

Nevertheless, the subject of safe operations by Mexico-domiciled carriers in the United States will likely generate considerable public interest within the meaning of Executive Order 12866. The manner in which the FMCSA carries out its safety oversight responsibilities with respect to this international motor carrier transportation may be of substantial interest to the domestic motor carrier industry, the Congress, and the public at large.

The Regulatory Evaluation analyzes the costs and benefits of this final rule and the two companion NAFTA-related interim final rules published elsewhere in today's **Federal Register**. Because these rules are so closely interrelated, we did not attempt to prepare separate analyses for each rule.

The evaluation estimated costs and benefits based on three different scenarios, with a high, low and medium number of Mexico-domiciled carriers assumed covered by the rules. The costs of these rules are minimal under all three scenarios. Over 10 years, the costs range from $53 million for the low scenario to approximately $76 million for the high scenario. Forty percent of these costs are borne by the FMCSA, while the remaining costs are paid by Mexico-domiciled carriers. The largest costs are those associated with carrying out safety monitoring, including safety audits, during the 18-month period when Mexico-domiciled motor carriers hold provisional Certificates of Registration and the loss of a Mexico-domiciled carrier's ability to operate in the United States.

The FMCSA used the cost effectiveness approach to determine the benefits of these rules. This approach involves estimating the number of crashes that would have to be deterred in order for the proposals to be cost effective. Over ten years, the low scenario would have to deter 640 forecast crashes to be cost beneficial, the medium scenario would have to deter 838, and the high scenario would have to deter 929. While the overall number of crashes to be avoided under the medium and high scenario is fairly high, the number falls rapidly over the 10-year analysis period and beyond. The tenth year deterrence rate is one-quarter to one-sixth the size of the first year's rate.

A copy of the Regulatory Evaluation is in the docket for this rulemaking.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (Pub. L. 96–354, 5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement and Fairness Act (Pub. L. 104–121), requires Federal agencies to analyze the impact of rulemakings on small entities, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The United States did not have in place a special system to ensure the safety of Mexico-domiciled carriers operating in the United States. Mexico-domiciled carriers will be subject to all the same safety regulations as domestic carriers. However, FMCSA's enforcement of the FMCSRs has become increasingly data dependent in the last several years. Several programs have been put in place to continually analyze crash rates, out-of-service (OOS) rates, compliance review records, and other data sources to allow the agency to focus on high-risk carriers. This strategy is only effective if the FMCSA has adequate data on carriers' size, operations, and history. Thus, a key component of this and the companion application rule for long-haul carriers, is the requirement that Mexico-domiciled carriers operating in the United States must complete a Form MCS–15—Motor Carrier Identification Report, and must update their Form OP–1(MX)—Application to Register Mexican Carriers for Motor Carrier Authority to Operate Beyond U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border or Form OP–2—Application for Mexican Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers Under 49 U.S.C. 13902 when their situation changes. This will allow the FMCSA to better monitor these carriers and to quickly determine whether their safety or OOS record changes.

The more stringent oversight procedures established in our safety monitoring interim final rule, RIN 2126–AA35, will also allow the FMCSA to respond more quickly when safety problems emerge. Required safety audits for short-haul carriers, and compliance reviews and CVSA inspections for long-haul carriers, will provide the FMCSA with more detailed information about Mexico-domiciled carriers, and allow the FMCSA to act appropriately upon discovering safety problems.

The objective of these rules is to enhance the safety of Mexico-domiciled carriers operating in the United States. The rules describe what additional information Mexico-domiciled carriers will have to submit, and outline the procedure for dealing with possible safety problems.

The safety monitoring system, the safety certifications and other information to be submitted in the OP–1(MX) and OP–2 applications and the pre-authorization safety audit for long-haul carriers are means of ensuring that: (1) Mexico-domiciled applicants are sufficiently knowledgeable about safety requirements before commencing operations (a prerequisite to being able to comply); and (2) their actual operations in the United States are conducted in accordance with their application certifications and the conditions of their registrations.

These rules will primarily affect Mexico-domiciled small motor carriers who wish to operate in the United States. The amount of information these carriers will have to supply to the FMCSA has been increased, and we estimate that they will spend two additional hours gathering data for the

OP–1(MX) and OP–2 application forms. All Mexico-domiciled carriers will have to undergo some type of safety audit after they receive provisional registration; those granted provisional operating authority for transportation beyond the border zones must demonstrate continuous compliance with motor vehicle safety standards through display of a valid CVSA inspection decal and compliance reviews. We presented three growth scenarios in the regulatory evaluation: a high option, with 11,787 Mexico-domiciled carriers in the baseline; a medium scenario, with 9,500 Mexico-domiciled carriers in the baseline; and a low scenario, with 4,500 Mexico-domiciled carriers in the baseline. Under all three options, the FMCSA believes that the number of applicants will match approximately that observed in the last few years before this publication date, approximately 1,365 applicants per year.

A review of the Motor Carrier Management Information System (MCMIS) census file reveals that the vast majority of Mexico-domiciled carriers are small, with 75 percent having three or fewer vehicles. Carriers at the 95th percentile had only 15 trucks or buses.

These rules should not have any impact on small U.S.-domiciled motor carriers.

The regulatory evaluation includes a description of the recordkeeping and reporting requirements of these rules. Applicants for both the OP–1(MX) and OP–2 will also have to submit the Form MCS–150 and the Form BOC–3-Designation of Agent for Service of Process. In addition, Mexico-domiciled carriers will have to notify the FMCSA of any changes to certain information.

The MCS–150 is approximately two pages long. In addition to requiring basic identifying information, it requires that carriers state the type of operation they run, the number of vehicles and drivers they use, and the types of cargo they haul. The BOC–3 Form merely requires the name, address and other information for a domestic agent to receive legal notices on behalf of the motor carrier. The rules also include other modest changes in the OP–1(MX) and OP–2 forms.

None of these forms requires any special expertise to complete. Any individual with knowledge about the operations of a carrier should be able to fill out these forms.

The FMCSA is not aware of any other rules that duplicate, overlap with, or conflict with these rules.

The FMCSA did not establish any different requirements or timetables for small entities. As noted above, we do not believe these requirements are onerous. Mexico-domiciled carriers applying to operate solely within the border zones will be required to spend two extra hours to complete the relevant forms. They also must undergo one safety audit during the 18-month period while holding provisional Certificates of Registration at four hours each and have their trucks inspected more frequently. The Part 385 rule would not achieve its purposes if small entities were exempt. In order to ensure the safety of all Mexico-domiciled carriers, the rule must have a consistent procedure for addressing safety problems. Exempting small motor carriers (which, as was noted above, are the vast majority of Mexico-domiciled carriers who would operate in the United States) would defeat the purpose of these rules.

The FMCSA did not consolidate or simplify the compliance and reporting requirements for small carriers. Small U.S.-domiciled carriers already have to comply with the paperwork requirements in Part 365. There is no evidence that domestic carriers find these provisions confusing or particularly burdensome. Apropos the Part 385 provisions, we believe the requirements are fairly straightforward, and it would not be possible to simplify them. A simplification of any substance would make the rule ineffectual. Given the compelling interest in guaranteeing the safety of Mexico-domiciled carriers operating in the United States, and the fact that the majority of these carriers are small entities, no special changes were made.

Therefore, the FMCSA certifies that this rule will not have a significant impact on a substantial number of small entities.

Executive Order 13211 (Energy Supply, Distribution, or Use)

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. This action is not a significant energy action within the meaning of section 4(b) of the Executive Order because as a procedural action it is not economically significant and will not have a significant adverse effect on the supply, distribution, or use of energy.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; 2 U.S.C. 1532) requires each agency to assess the effects of its regulatory actions on State, local, and tribal governments and the private sector. Any agency promulgating a final rule likely to result in a Federal mandate requiring expenditures by a State, local, or tribal government or by the private sector of $100 million or more in any one year must prepare a written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. The FMCSA has determined that the changes in this rulemaking would not have an impact of $100 million or more in any one year. The Federal Government reimburses inspectors, funds facilities, and provides support through the MCSAP grant program.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity and reduce burden.

Executive Order 13045 (Protection of Children)

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (April 23, 1997, 62 FR 19885), requires that agencies issuing ''economically significant'' rules that also concern an environmental health or safety risk that an agency has reason to believe may disproportionately affect children must include an evaluation of the environmental health and safety effects of the regulation on children. Section 5 of Executive Order 13045 directs an agency to submit for a ''covered regulatory action'' an evaluation of its environmental health or safety effects on children.

The agency has determined that this rule is not a ''covered regulatory action'' as defined under Executive Order 13045. First, this rule is not economically significant under Executive Order 12866 because the FMCSA has determined that the changes in this rulemaking would not have an impact of $100 million or more in any one year. The costs range from $53 to $76 million over 10 years. Second, the agency has no reason to believe that the rule would result in an environmental health risk or safety risk that would disproportionately affect children. Mexico-domiciled motor carriers who intend to operate commercial motor vehicles anywhere in the United States must comply with current U.S. Environmental Protection Agency regulations and other United States environmental laws under this rule and others being published elsewhere in today's **Federal Register**. Further, the agency has conducted a programmatic environmental

assessment as discussed later in this preamble. While the PEA did not specifically address environmental impacts on children, it did address whether the rule would have environmental impacts in general. Based on the PEA, the agency has determined that the proposed rule would have no significant environmental impacts.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FMCSA has determined that this proposal would impact a currently approved information collection, OMB Control Number 2126–0019.

The information collection associated with the Form OP–2 has been approved by the OMB under the control number 2126–0019, titled ''Application for Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers.'' This current approval covers Form OP–2 and totals 2,000 burden hours (1,000 respondents per year @ 2 hours each) to complete the form.

Revisions to OP–2 Baseline: A PRA review normally involves determining the information collection impacts of a recordkeeping requirement imposed on a person, comparing those impacts with the current regulation (baseline) and measuring the resulting change. The FMCSA finds it necessary to amend the baseline: (1) To be consistent with updated demographic data concerning the number of Mexico-domiciled carriers operating in the U.S. as set forth in the programmatic environmental assessment (PEA) and Regulatory Flexibility Analysis to this rule, and (2) to take into account an imminent Presidential action that is not subject to PRA review—the issuance of a Presidential Order lifting the moratorium on grants of operating authority to Mexico-domiciled motor carriers to operate within the United States beyond the border commercial zones. The PEA and Regulatory Flexibility Analysis to this rule project high, medium, and low estimates for the number of Mexico-domiciled motor carriers now operating within the United States. The PRA review is based on the medium estimate (9,500) because we believe it is the most accurate estimate (rather than the high estimate of 11,787 used in the NPRM). The medium estimate was also used in the PEA and the Regulatory Flexibility Analysis. Therefore, the revised baseline assumes: (1) The medium scenario is used; (2) the moratorium is lifted; and (3) Mexico-domiciled carriers are filing the existing OP–2 application form. It is estimated that 75 percent of new applicants each year will file the OP–2 (with 25 percent filing the OP–1(MX)). The number of new applicants in the baseline assumes a 10 percent increase over the current 1,300 (1,430).

Adjusted burden hour calculation for completion of the currently approved IC under the medium scenario. The FMCSA estimates that 5,823 Mexico-domiciled carriers will request OP–2 certificates of registration in year one (includes half of the 9,500 Mexican carriers (4,750) plus 75 percent of 1,430 new applicants (1,073)); and 1,073 Mexico-domiciled carriers will apply in subsequent years. The existing form takes approximately 2 hours to complete. Since Mexico-domiciled carriers currently are not required to update carrier identification information, there would be zero updates received in year one or subsequent years. The revised baseline medium scenario is calculated as follows:

OP–2 filings 11,646 hours [5,823 × 2 hours per form] (year one)
OP–2 filings 2,146 hours [1,073 × 2 hours per form] (subsequent years)

The revised baseline medium scenario results in the following annual adjusted burden hour estimate for completion of Form OP–2 pursuant to OMB Control Number 2126–0019:

Year One: 11,646
Subsequent Years: 2,146

Impact of the final rule and adjusted burden hour calculation for completion of Form OP–2 under the revised baseline medium scenario. This action proposes to amend 49 CFR part 368 and revise Form OP–2. We propose to use the amended Form OP–2 and the issuance of certificates of registration only for those carriers whose operations are limited to the border commercial zones. The FMCSA believes that despite the opportunity for Mexico-domiciled carriers to operate beyond the border commercial zones, there are a substantial number of carriers that are most familiar with the Certificate of Registration and want to continue operating in a limited area. Under the revised Form OP–2, the FMCSA will require the applicant motor carrier to certify the safety of its operations; this information is not collected on the current form. In addition, all certificates of registration issued under the revised form would be conditioned upon the carrier's successful completion of an 18-month safety monitoring program (established in an interim final rule published elsewhere in today's **Federal Register**), including a safety audit. For these reasons, the FMCSA anticipates that the number of carriers would be lower than the revised baseline. The FMCSA estimates that 5,774 Mexico-domiciled carriers would apply for OP–2 certificates of registration in year one (includes half of the 9,500 Mexican carriers (4,750) plus 75 percent of the 1,365 new applicants (1,024)); and 1,024 carriers thereafter. Due to the additional information requested on the form, the FMCSA estimates that it will take 4 hours to complete, rather than the current estimate of 2 hours.

The FMCSA must be notified in writing of certain key changes in the information on the form within 45 days of the change. For changes and updates, the agency anticipates that annually approximately one quarter of those granted certificates of registration will update their applications. It will take approximately 30 minutes to complete the updates. For simplicity's sake, we based the number of individuals granted certificates of registration on the estimated total number of first-year applicants.

Mexico-domiciled carrier filings of the Form OP–2:
- 50 percent of 9,500 carriers in 1st year (4,750) × 4 hours per form = 19,000
- 75 percent of 1,365 new applicants in 1st year (1,024) × 4 hours = 4,096
- 75 percent of 1,365 new applicants in future years (1,024) × 4 hours = 4,096
- Total burden hours for revised Form OP–2/Year 1 = 23,096
- Total burden hours for revised Form OP–2/Future Years = 4,096

OP–2 Updates/Changes:
- 25 percent of 4,750 carriers filing in 1st year (1,188) × 30 minutes = 594
- 25 percent of 1,024 filings for new carriers in 1st year (256) × 30 min. = 128
- 25 percent of 1,024 filings for new carriers in future years (256) × 30 min. = 128
- Total burden hours for updates/changes in 1st year = 722
- Total burden hours for updates/changes in future years = 128

Therefore, the FMCSA estimates that the final rule will adjust the annual burden hour estimate for the information collection associated with the Form OP–2 as follows:

In the first year: The total burden hours for this information collection in the first year is 23,818 hours [(19,000 hours + 4,096 + 722 hours)]; and in subsequent years: 4,224 hours [4,096 hours + 128].

OMB Control Number: 2126–0019

Title: Application for Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers.

Respondents: Mexico-domiciled motor carriers.

Estimated Annual Hour Burden for the Information Collection: Year 1 = 23,818; subsequent years = 4,224.

You may submit any additional comments on the *information collection burden* addressed by this final rule to the Office of Management and Budget (OMB). The OMB must receive your comments by April 18, 2002. You must mail or hand deliver your comments to: Attention: Desk Officer for the Department of Transportation, Docket Library, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, 725 17th Street, NW., Washington, DC 20503.

National Environmental Policy Act

The FMCSA is a new administration within the Department of Transportation (DOT). The FMCSA is currently developing an agency order that will comply with all statutory and regulatory policies under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). We expect the draft FMCSA Order to appear in the **Federal Register** for public comment in the near future. The framework of the FMCSA Order will be consistent with and reflect the procedures for considering environmental impacts under DOT Order 5610.1C. FMCSA has analyzed this rule under the NEPA and DOT Order 5610.1C, and has issued a Finding Of No Significant Impact (FONSI). The FONSI and the environmental assessment are in the docket to this rule.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under E. O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999 (64 FR 43255, August 10, 1999). The FMCSA has determined that this action would not have significant Federalism implications or limit the policymaking discretion of the States.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217 Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Executive Order 13166 (Limited English Proficiency)

Executive Order 13166, Improving Access to Services for Persons With Limited English Proficiency, requires each Federal agency to examine the services it provides and develop reasonable measures to ensure that persons seeking government services but limited in their English proficiency can meaningfully access these services consistent with, and without unduly burdening, the fundamental mission of the agency. The FMCSA plans to provide a Spanish translation of the application and instructions of the Form OP–2. We believe that this action complies with the principles enunciated in the Executive Order.

List of Subjects

49 CFR Part 368

Administrative practice and procedure, Motor carriers.

49 CFR Part 387

Buses, Freight, Freight forwarders, Hazardous materials transportation, Highway safety, Insurance, Intergovernmental relations, Motor carriers, Motor vehicle safety, Moving of household goods, Penalties, Reporting and recordkeeping requirements, Surety bonds.

For the reasons set forth in the preamble, the FMCSA amends 49 CFR, Chapter III as follows:

1. Revise part 368 to read as follows:

PART 368—APPLICATION FOR A CERTIFICATE OF REGISTRATION TO OPERATE IN MUNICIPALITIES IN THE UNITED STATES ON THE UNITED STATES-MEXICO INTERNATIONAL BORDER OR WITHIN THE COMMERCIAL ZONES OF SUCH MUNICIPALITIES.

Sec.

Authority: 49 U.S.C. 13301 and 13902; Pub. L. 106–159, 113 Stat. 1748; and 49 CFR 1.73.

§ 368.1 Certificate of registration.

(a) A Mexico-domiciled motor carrier must apply to the FMCSA and receive a Certificate of Registration to provide interstate transportation in municipalities in the United States on the United States-Mexico international border or within the commercial zones of such municipalities as defined in 49 U.S.C. 13902(c)(4)(A).

(b) A certificate of registration permits only interstate transportation of property in municipalities in the United States on the United States-Mexico international border or within the commercial zones of such municipalities. A holder of a Certificate of Registration who operates a vehicle beyond this area is subject to applicable penalties and out-of-service orders.

§ 368.2 Definitions.

Interstate transportation means transportation described at 49 U.S.C. 13501, and transportation in the United States otherwise exempt from the Secretary's jurisdiction under 49 U.S.C. 13506(b)(1).

Mexico-domiciled motor carrier means a motor carrier of property whose principal place of business is located in Mexico.

§ 368.3 Applying for a certificate of registration.

(a) If you wish to obtain a certificate of registration under this part, you must submit an application that includes the following:

(1) Form OP–2—Application for Mexican Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers Under 49 U.S.C. 13902;

(2) Form MCS–150—Motor Carrier Identification Report; and

(3) A notification of the means used to designate process agents, either by submission in the application package of Form BOC–3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders or a letter stating that the applicant will use a process agent service that will submit the Form BOC–3 electronically.

(b) The FMCSA will only process your application for a Certificate of Registration if it meets the following conditions:

(1) The application must be completed in English;

(2) The information supplied must be accurate and complete in accordance with the instructions to the Form OP–2, Form MCS–150 and Form BOC–3;

(3) The application must include all the required supporting documents and applicable certifications set forth in the instructions to the Form OP–2, Form MCS–150 and Form BOC–3;

(4) The application must include the filing fee payable to the FMCSA in the amount set forth in 49 CFR 360.3(f)(1); and

(5) The application must be signed by the applicant.

(c) If you fail to furnish the complete application as described under paragraph (b) of this section your application may be rejected.

(d) If you submit false information under this section, you will be subject to applicable Federal penalties.

(e) You must submit the application to the address provided in the instructions to the Form OP–2.

(f) You may obtain the application described in paragraph (a) of this section from any FMCSA Division Office or download it from the FMCSA web site at: *http://www.fmcsa.dot.gov/factsfigs/formspubs.htm.*

§ 368.4 Requirement to notify FMCSA of change in applicant information.

(a) You must notify the FMCSA of any changes or corrections to the information in Parts I, IA or II submitted on the Form OP–2 or the Form BOC–3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders during the application process or while you have a Certificate of Registration. You must notify the FMCSA in writing within 45 days of the change or correction.

(b) If you fail to comply with paragraph (a) of this section, the FMCSA may suspend or revoke the Certificate of Registration until you meet those requirements.

§ 368.5 Re-registration of certain carriers holding certificates of registration.

(a) Each holder of a certificate of registration that permits operations only in municipalities in the United States along the United States-Mexico international border or in commercial zones of such municipalities issued before April 18, 2002, who wishes to continue solely in those operations must submit an application according to procedures established under § 368.3 of this part, except the filing fee in paragraph (b)(4) of that section is waived. You must file your application by October 20, 2003.

(b) The FMCSA may suspend or revoke the certificate of registration of any registrant that fails to comply with the procedures set forth in this section.

(c) Certificates of registration issued before April 18, 2002, remain valid until the FMCSA acts on the OP–2 application filed according to paragraph (a) of this section.

§ 368.6 FMCSA action on the application.

(a) The Federal Motor Carrier Safety Administration will review the application for correctness, completeness, and adequacy of information. Non-material errors will be corrected without notice to the applicant. Incomplete applications may be rejected.

(b) If the applicant does not require or is not eligible for a Certificate of Registration, the FMCSA will deny the application and notify the applicant.

(c) The FMCSA will validate the accuracy of information and certifications provided in the application against data maintained in databases of the governments of Mexico and the United States.

(d) If the FMCSA determines that the application and certifications demonstrate that the application is consistent with the FMCSA's safety fitness policy, it will issue a provisional Certificate of Registration, including a distinctive USDOT Number that identifies the motor carrier as permitted to provide interstate transportation of property solely in municipalities in the United States on the U.S.-Mexico international border or within the commercial zones of such municipalities.

(e) The FMCSA may issue a permanent Certificate of Registration to the holder of a provisional Certificate of Registration no earlier than 18 months after the date of issuance of the Certificate and only after completion to the satisfaction of the FMCSA of the safety monitoring system for Mexico-domiciled carriers set out in subpart B of part 385 of this subchapter.

(f) Notice of the authority sought will not be published in either the **Federal Register** or the FMCSA Register. Protests or comments will not be allowed. There will be no oral hearings.

§ 368.7 Requirement to carry certificate of registration in the vehicle.

A holder of a Certificate of Registration must maintain a copy of the Certificate of Registration in any vehicle providing transportation service within the scope of the Certificate, and make it available upon request to any State or Federal authorized inspector or enforcement officer.

§ 368.8 Appeals.

An applicant has the right to appeal denial of the application. The appeal must be in writing and specify in detail why the agency's decision to deny the application was wrong. The appeal must be filed with the Director, Office of Data Analysis and Information Systems within 20 days of the date of the letter denying the application. The decision of the Director will be the final agency order.

PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

2. The authority citation for part 387 continues to read as follows:

Authority: 49 U.S.C. 13101,13301,13906, 14701, 31138, and 31139; and 49 CFR 1.73.

3. In § 387.7, revise the first sentence of paragraph (b)(3) introductory text to read as follows:

§ 387.7 Financial responsibility required.

* * * * *

(b) * * *

(3) Exception. A Mexico-domiciled motor carrier operating solely in municipalities in the United States on the U.S.-Mexico international border or within the commercial zones of such municipalities with a Certificate of Registration issued under part 368 may meet the minimum financial responsibility requirements of this subpart by obtaining insurance coverage, in the required amounts, for periods of 24 hours or longer, from insurers that meet the requirements of § 387.11 of this subpart. * * *

* * * * *

Issued on: March 7, 2002.

Joseph M. Clapp,

Administrator.

Note: The following form will not appear in the Code of Federal Regulations.

BILLING CODE 4910–EX–P

U.S. Department of Transportation

Form Approved
OMB No. 2126-0019

Federal Motor Carrier Safety Administration

Instructions for Completing Form OP-2 Application for Mexican Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers Under 49 U.S.C. 13902

Please read these instructions before completing the application form. Retain the instructions and a copy of the complete application for the applicant's records. These instructions will assist an applicant in preparing an accurate and complete application. Applications that do not contain the required information will be rejected and may result in a loss of the application fee. **The application must be completed in English** and typed or printed in ink. If additional space is needed to provide a response to any item, use a separate sheet of paper. Identify applicant on each supplemental page and refer to the section and item number in the application for each response.

PURPOSE OF THIS APPLICATION FORM:

The Form OP-2 is required to be filed by Mexico-domiciled for-hire motor carriers and motor private carriers who wish to register to transport property only in municipalities in the United States on the United States-Mexico international border or within the commercial zones of such municipalities.

This form is also required to be utilized by Mexico-domiciled for-hire and motor private carriers that hold a Certificate of Registration from the former Interstate Commerce Commission, the Federal Highway Administration, the Office of Motor Carrier Safety or the Federal Motor Carrier Safety Administration issued before April 18, 2002, with a territorial scope of operations limited to municipalities in the United States on the United States-Mexico international border or within the commercial zones of such municipalities and are required to supplement the information in their original applications by completing and re-filing the revised Form OP-2.

This form should not be used for registration by Mexico-domiciled for-hire and motor private carriers to perform transportation in the United States beyond the commercial zones of municipalities on the international border. To register or reregister to conduct operations beyond commercial zones, an applicant should instead complete and file Form OP-1(MX).

This form should not be filed by U.S.-domiciled enterprises owned or controlled by Mexican nationals. Such enterprises must complete and file Form OP-1 or OP-1(P), for property or passengers, respectively.

Under NAFTA Annex I, page I-U-20, a Mexico-domiciled carrier may not provide point-to-point transportation services, including express delivery services, within the United States for goods other than international cargo.

WHAT TO FILE:

All applicants must submit the following:

1. An original and one copy of a completed revised Form OP-2, Application for Mexican Certificate of Registration for Foreign Motor Carriers and Foreign

Motor Private Carriers Under 49 U.S.C. 13902, with all necessary attachments and statements.

2. A signed and dated Form BOC-3, Designation of Agents for Service of Process, which reflects the applicant's full and correct name, as shown on the Form OP-2, and applicant's address, including the street address, the city, State, country and zip code, must be attached to the application. The BOC-3 form must show street address(es), and not post office box numbers, for the person(s) designated as the agent(s) for service of process and administrative notices in connection with the enforcement of any applicable Federal statutes or regulations. A person must be designated in each State in which the applicant will operate. Please refer to the section "Legal Process Agents" for instructions for filing the Form BOC-3 when using a Process Agent Service. **The applicant may not begin operations unless the Form BOC-3 has been filed with the FMCSA.**

3. A completed and signed Form MCS-150 Motor Carrier Identification Report.

4. A filing fee of $300 for **each** type of registration requested in Section III, payable in U.S. dollars on a U.S. bank to the Federal Motor Carrier Safety Administration, by means of a check, money order or an approved credit card. Cash is not accepted.

GENERAL INSTRUCTIONS FOR COMPLETING THE APPLICATION FORM:

- All questions on the application form must be answered completely and accurately. If a question or supplemental attachment does not apply to the applicant, it should be answered "not applicable."

- The application must be typewritten or printed in ink. Applications written in pencil will be rejected.

- The application must be completed in English.

- The completed certification statements and oath must be signed by the applicant only. For example:

    - If the company is a sole proprietorship, the owner must sign.

    - If the company is a partnership, one of the partners must sign.

    - If the company is a corporation, an official of the company must sign (President, Vice President, Secretary, Treasurer, etc.).

  The same person must sign the oath and certifications. An applicant's attorney or any other representative is not permitted to sign.

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- Use the attachment pages included, as appropriate, to provide any descriptions, explanations, statements or other information that is required to be furnished with the application. If additional space is needed to respond to any question, please use separate sheets of paper. Identify continuation sheets by using headings that show both the number of the page of the revised OP-2 form or Attachment page on which the question or response appears and the item number of the question.

- Include only the city code and telephone number for Mexican telephone phone numbers. **Do not** include the Mexico international access code (011-52).

ADDITIONAL ASSISTANCE

FORM OP-2 OR MCS-150

Call 001 (800) 832-5660 for additional information on obtaining FMCSA registration numbers (USDOT or MX) or to monitor the status of an application.

SAFETY RATINGS

For information concerning a carrier's assigned safety rating, call: 001 (800) 832-5660.

U.S. DOT HAZARDOUS MATERIALS REGULATIONS

To obtain information on whether the commodities an applicant intends to transport are considered as hazardous materials:

Refer to the provisions governing the transportation of hazardous materials found under Parts 100 through 180 of Title 49 of the Code of Federal Regulations (CFR), particularly the Hazardous Materials Table at 49 CFR § 172.101 or visit the U.S. DOT, Research and Special Programs Administration web site: http://hazmat.dot.gov. The web site also provides information about DOT hazardous materials transportation registration requirements.

SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

SECTION I - APPLICANT INFORMATION

APPLICANT'S LEGAL BUSINESS NAME and DOING BUSINESS AS NAME. The applicant's name should be the applicant's full legal business name -- the name on the incorporation certificate, partnership agreement, tax records, etc. If the applicant uses a trade name that differs from its official business name, indicate this under "Doing Business As Name." Example: If the applicant is John Jones, doing business as Quick Way Trucking, enter "John Jones" under LEGAL BUSINESS NAME and "Quick Way Trucking" under DOING BUSINESS AS NAME.

Because the FMCSA uses computers to retain information about licensed carriers, it is important to spell, space, and punctuate any name the same way each time the applicant writes it. Example: John Jones Trucking Co., Inc.; J. Jones Trucking Co., Inc.; and John Jones Trucking are considered three separate companies.

BUSINESS ADDRESS/MAILING ADDRESS. The business address is the physical location of the business in Mexico. Example: El Camino Real #756, Guadalajara, Jalisco, Mexico. Please include the Mexican "colonia" or "barrio."

If applicant receives mail at an address different from the business location, also provide the mailing address. Example: P. O. Box 3721. **NOTE:** To receive FMCSA notices and to ensure that insurance documents filed on applicant's behalf are accepted, notify in writing the Federal Motor Carrier Safety Administration, Room 8218, 400 7th Street, SW., Washington, DC 20590, if the business or mailing address changes. If applicant also maintains an office in the United States, that information should also be provided.

REPRESENTATIVE. If someone other than the applicant is preparing this form, or otherwise assisting the applicant in completing the application, provide the representative's name, title, position, or relationship to the applicant, address, and telephone and FAX numbers. Applicant's representative will be the person contacted if there are questions concerning this application. Do not include the "colonia" or "barrio" unless the address is in Mexico.

SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

U.S. DOT NUMBER. Applicants are required to obtain a U.S. DOT Number from the U.S. Department of Transportation (U.S. DOT) before initiating service. Motor carriers that already have been issued a U.S. DOT Number should provide it. Applicants that have not previously obtained a U.S. DOT Number will be issued a U.S. DOT number along with their provisional Certificate of Registration.

NOTE: A completed and signed Form MCS-150 Motor Carrier Identification Report must be submitted separately with this application.

FORM OF BUSINESS. A business is a corporation, a sole proprietorship, or a partnership. If the business is a sole proprietorship, provide the name of the individual who is the owner. In this situation, the Owner is the registration applicant. If the business is a partnership, provide the full name of each partner.

SECTION IA – ADDITIONAL APPLICANT INFORMATION

All applicants must answer each question in this section. Applicants cannot obtain a Certificate of Registration unless registered with the Mexican Government's Secretaria de Comunicaciones y Transportes (SCT). Therefore, if the applicant is in the process of obtaining an SCT registration, indicate the date that the applicant applied. When the applicant receives its SCT registration, it must supplement this OP-2 application with that information, including its RFC Number (Registro Federal de Contribuyente if the applicant is a company. Registro Federal de Causante, if applicant is an individual), before the FMCSA will issue a Certificate of Registration. If the applicant currently holds a valid Certificate of Registration and is updating this application as required by 49 CFR 368.5, the SCT Registration information, including the RFC Number, is also required. FMCSA will not suspend an existing Certificate of Registration while an applicant is applying for SCT registration.

SECTION II – AFFILIATIONS INFORMATION

All applicants must disclose pertinent information concerning any relationships or affiliations which the applicant has had with other entities registered with FMCSA or its predecessor agencies. Applicant must indicate whether these entities have been disqualified from operating commercial motor vehicles anywhere in the United States pursuant to Section 219 of the Motor Carrier Safety Improvement Act of 1999.

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SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

SECTION III – TYPE(S) OF REGISTRATION REQUESTED

Check the appropriate box(es) for the type(s) of registration the applicant is requesting. For purposes of this application, for-hire motor carrier means an entity that is transporting the goods of others, and a motor private carrier is an entity that is transporting its own goods, including an entity that is not a for-hire carrier but is providing interstate transportation under an agreement or contract with a shipper or other business.

A separate filing fee is required for each type of registration requested.

If the applicant is re-registering, do not complete Section III unless applicant is requesting a new type of authority. Please refer to the following for a description of the commercial zones:

COMMERCIAL ZONES
UNITED STATES/MEXICO PORTS OF ENTRY

Commercial zones, unless otherwise defined, are determined through a formula dependant upon the population of the municipality (49 CFR 372, Subpart B). The commercial zones for all United States/Mexico ports of entry allow for transportation from the corporate limits of the municipality as follows:

	Location	Population	Commercial Zone
Limits			
Arizona			
	Douglas	**13,270**	**4 miles**
	Lukeville	**65**	**3 miles**
	Naco	**1,000**	**3 miles**
	Nogales	**19,745**	**4 miles**
	San Luis	**6,405**	**4 miles**
	Sasabe	**37**	**3 miles**
California			
	Andrade	**20**	**3 miles**
	Calexico	**22,246**	**4 miles**
	Otay Mesa	**Unknown**	**20 miles**
	San Diego	**1,110,500**	**20 miles**
	Tecate	**212**	**20 miles****

SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

	Location	Population	Commercial Zone
Limits			
New Mexico			
	Columbus	N/A	+++
	Santa Teresa	Unknown	+++
Texas			
	Brownsville	266,600+	*
	Del Rio	30,705	6 miles
	Eagle Pass	20,651	4 miles
	El Paso	592,400	15 miles
	Fabens	1,599	3 miles
	Hidalgo	384,800++	*
	Laredo	126,300	8 miles
	Presidio	3,072	4 miles
	Progresso	1,951	*
	Rio Grande City	9,891	*
	Roma	8,059	*

*Cameron, Hidalgo, Starr and Willacy Counties, Texas

Transportation within a zone comprised of Cameron, Hidalgo, Starr and Willacy Counties, Texas, by motor carriers of property, in interstate or foreign commerce, not under common control, management, or arrangement for shipments to or from points beyond such zone, is partially exempt from regulation under 49 U.S.C. §13506.

To the extent that commercial zones of municipalities within the above four counties extend beyond the boundaries of such commercial zones, they shall be considered to be part of the zone and partially exempt from regulation under 49 U.S.C. §13506.

**Considered a part of the San Diego commercial zone.
+Population based upon Brownsville-Harlingen metropolitan area.
++Population based upon McAllen-Edinburg-Mission metropolitan area.
+++The area comprised of Dona Ana and Luna counties.

SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

SECTION IV - INSURANCE INFORMATION

Check the appropriate box(es) that describes the type(s) of business applicant will be conducting.

If applicant is applying for motor property carrier registration and operates vehicles with a gross vehicle weight rating of 10,000 pounds or more and hauls only non-hazardous materials, applicant must maintain $750,000 minimum liability coverage for the protection of the public. Hazardous materials referred to in the FMCSA's insurance regulations in item (c) of the table at 49 CFR 387.303 (b)(2) require $1 million minimum liability coverage; those in item (b) of the table at 49 CFR 387.303 (b)(2) require $5 million minimum liability coverage.

If applicant operates only vehicles with a gross vehicle weight rating under 10,000 pounds, applicant must maintain $300,000 minimum liability coverage. If applicant operates only such vehicles but will be transporting any quantity of Division 1.1, 1.2 or 1.3 explosives; any quantity of poison gas (Division 2.3, Hazard Zone A, or Division 6.1, Packing Group 1, Hazard Zone A materials); or highway route controlled quantity of radioactive materials, applicant must maintain $5 million minimum liability coverage.

The FMCSA does not furnish copies of insurance forms. Applicant must contact its insurance company to obtain all required insurance forms.

Applicant does not have to submit evidence of insurance with the application. If applicant is issued a Certificate of Registration, the following must be on each of its vehicles when crossing the border:

- a current DOT Form MCS-90, and
- evidence of insurance. The evidence of insurance must show either trip insurance coverage (24 hours or more coverage), or evidence of continuing insurance.

SECTION V - SAFETY CERTIFICATIONS

Applicants for motor carrier registration must complete the safety certifications. Applicant should check the "YES" response only if it can attest to the truth of the statements. The carrier official's signature at the end of this section applies to the Safety Certifications. The "Applicant's Oath" at the end of the application form applies to all certifications. False certifications are subject to the penalties described in that oath.

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SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

If applicant is exempt from the U.S. DOT safety fitness regulations because applicant operates only vehicles with a gross vehicle weight rating under 10,001 pounds, and it will not transport any hazardous materials, applicant must certify that it is familiar with and will observe general operational safety fitness guidelines and applicable State, local and tribal laws relating to the safe operation of commercial vehicles.

Applicants should complete all applicable Attachment pages and, if necessary to complete the responses, attach additional pages referring to the appropriate Sections and items in the application or Attachment pages. If applicant is exempt from the U.S. DOT safety fitness regulations, applicant must complete all relevant attachment pages to demonstrate its willingness and ability to comply with general operational safety fitness guidelines and applicable State, local and tribal laws.

SECTION VI - HOUSEHOLD GOODS ARBITRATION CERTIFICATIONS

For-hire carriers of property operating entirely in commercial zone areas that intend to transport household goods as defined in 49 U.S.C. 13102 (10) must certify their agreement to offer arbitration as a means of settling loss and damage claims as a condition of registration. The signature should be that of the same company official who completes the Applicant's Oath.

SECTION VII - COMPLIANCE CERTIFICATIONS

All applicants are required to certify accurately to their willingness and ability to comply with statutory and regulatory requirements, to their tax payment status, and to their understanding that their agent for service of process is their official representative in the U.S. to receive filings and notices in connection with enforcement of any Federal statutes and regulations.

Applicants are required to certify their willingness to produce records for the purpose of determining compliance with the applicable safety regulations of the FMCSA.

Applicants are required to certify that they are not now disqualified from operating a commercial motor vehicle in the U.S. pursuant to the Motor Carrier Safety Improvement Act of 1999.

Form OP-2
Revised March 2002

SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

Applicants are required to certify that they are not now prohibited from filing an application because a previously granted FMCSA registration is currently under suspension or was revoked less than 30 days before the filing of this application.

SECTION VIII - APPLICANT'S OATH

The applicant or an authorized representative may prepare applications. In either case, the applicant must sign the oath and all safety certifications. (For information on who may sign, see "General Instructions for Completing the Application Form" in the instructions for this application.)

LEGAL PROCESS AGENTS

All motor carrier applicants must designate a process agent in each State where operations are conducted. For example, if applicant will operate only in commercial zones along the U.S./Mexico border that are located in CA and AZ, applicant must designate an agent in each of those States; if applicant will operate only in one State, an agent must be designated only in that specific State. Process agents who will accept filings and notices on behalf of the applicant are designated on FMCSA Form BOC-3. Form BOC-3 must be filed with the application, unless applicant uses a Process Agent Service. If applicant opts to use a Process Agent Service, applicant must submit a letter with the application informing the FMCSA of this decision and have the Process Agent Service electronically file the BOC-3 with FMCSA within 90 days after applicant submits its application. **Applicants may not begin operations unless the Form BOC-3 has been filed with the FMCSA.**

STATE NOTIFICATION

Before beginning operations, all applicants must contact the appropriate regulatory agencies in every State in which the carrier will operate to obtain information regarding various State rules applicable to interstate registrations. It is the applicant's responsibility to comply with registration, fuel tax, and other State regulations and procedures. Please refer to the additional information provided in the application packet for further information.

SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

MAILING INSTRUCTIONS:

To file for registration applicant must submit an ***original and one copy*** of this application with the appropriate filing fee to FMCSA. **Note:** Retain a copy of the completed application form and any attachments for the applicant's records.

Mailing address for applications:

FOR REGULAR MAIL (CHECK OR MONEY ORDER PAYMENT)
Federal Motor Carrier Safety Administration
P. O. Box 100147
Atlanta, GA 30384-0147

FOR EXPRESS MAIL (CHECK OR MONEY ORDER PAYMENT)
Bank of America, Lockbox 100147
6000 Feldwood Road
3rd Floor East
College Park, GA 30349

FOR CREDIT CARD PAYMENT
FMCSA Trans-border Office
P.O. Box 530870
San Diego, CA 92153-0870

FOR RE-APPLICATION (NO PAYMENT REQUIRED)
FMCSA Trans-border Office
P.O. Box 530870
San Diego, CA 92153-0870

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U.S. Department of Transportation

Form Approved
OMB No. 2126-0019

Federal Motor Carrier Safety Administration

FORM OP-2
Application for Mexican Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers Under 49 U.S.C. 13902

This application is for all Mexico-domiciled for-hire motor carriers and motor private carriers who wish to register to transport property only in municipalities in the United States on the United States-Mexico international border or within the commercial zones of such municipalities; and for Mexico-domiciled for-hire and motor private carriers that hold a Certificate of Registration from the former Interstate Commerce Commission, the Federal Highway Administration, the Office of Motor Carrier Safety or the Federal Motor Carrier Safety Administration issued before April 18, 2002, authorizing operations in the border commercial zones and that are required to file the revised Form OP-2.

For FMCSA Use Only

Docket No. MX_____

DOT No. _____

Filed _____

Fee No. _____

CC Approval Number _____

Application Tracking Number _____

PAPERWORK BURDEN

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. It is estimated that an average of 4 burden hours per response is required to complete this collection of information. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments concerning the accuracy of this burden estimate or suggestions for reducing this burden should be directed to the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 400 Virginia Avenue, S.W., Suite 600, Washington, DC 20024

SECTION I - APPLICANT INFORMATION

LEGAL BUSINESS NAME:_____

DOING BUSINESS AS NAME: (Trade Name, if any) _____

_____

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BUSINESS ADDRESS: (Actual Street Address):

(Street Name and Number)

(City) (State) (Country) (Zip Code)

(Colonia)

(_____)_____ (_____)_____
(Telephone Number) (Fax Number)

MAILING ADDRESS: (If different from above)

(Street Name and Number)

(City) (State) (Country) (Zip Code)

(Colonia)

U.S. ADDRESS: (Does the applicant currently have an office in the United States? If yes, give address and telephone number.)

(Street Name and Number)

(City) (State) (Country) (Zip Code)

(_____)_____ (_____)_____
(Telephone Number) (Fax Number)

APPLICANT'S REPRESENTATIVE: (Person who can respond to inquiries)

(Name and title, position, or relationship to applicant)

(Street Name and Number)

(City) (State) (Country) (Zip Code)

(Colonia – Mexican addresses only)

(_____)_____ (_____)_____
(Telephone Number) (Fax Number)

U.S. DOT NUMBER (If available) _____

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FORM OF BUSINESS (Check one)

☐ CORPORATION (Give Mexican or U.S. State of Incorporation) _____

_____

☐ SOLE PROPRIETORSHIP (Give full name of individual)

_____

(First Name) (Middle Name) (Surname)

☐ PARTNERSHIP (Give full name of each partner)_____

_____

SECTION IA – ADDITIONAL APPLICANT INFORMATION

1. Does applicant currently operate in the United States?

☐ Yes ☐ No

1a. If yes, indicate the locations where applicant operates and the ports of entry utilized.

_____

_____

_____

2. Has the applicant previously completed and submitted a Form MCS-150?

☐ Yes ☐ No

2a. If yes, give the name under which it was submitted.

_____

_____

3. Does applicant presently hold, or has it ever applied for, regular (MC) or Mexican (MX) authority from the former U.S. Interstate Commerce Commission, the U.S. Federal Highway Administration, the Office of Motor Carrier Safety or the Federal Motor Carrier Safety Administration of the U.S. Department of Transportation under the name shown on this application, or under any other name?

☐ Yes ☐ No

3a. If yes, please identify the lead docket number(s) assigned to the application or grant of authority.

_____

_____

3b. If the application was rejected before the time a lead docket number(s) was assigned, please provide the name of the applicant shown on the application.

_____

_____

3c. If yes, did FMCSA revoke applicant's provisional operating authority or provisional Certificate of Registration after April 18, 2002, because applicant failed to receive a Satisfactory safety rating or because the FMCSA otherwise determined applicant's basic safety management controls were inadequate.

☐ Yes ☐ No

3d. If applicant answered yes to 3c above, it must explain how it has corrected the deficiencies that resulted in revocation, explain what effectively functioning basic safety management systems it has in place, and provide any information and documents that support its case. (If applicant requires more space, **attach the information to this application form**.

_____

_____

_____

_____

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4. Does the applicant hold a Federal Tax Number from the U.S. Government?

☐ Yes ☐ No

4a. If yes, enter the number here: _____

5. Is the applicant registered with the Mexican Government's Secretaria de Comunicaciones y Transportes (SCT)?

☐ Yes ☐ No

5a. If yes, give the name under which the applicant is registered with the SCT, the applicant's RFC Number, and the place where the SCT Registration was issued.

_____

_____

_____

_____

_____

5b. If no, indicate the date the applicant applied with SCT.

_____

SECTION II – AFFILIATIONS INFORMATION

Disclose any relationship the applicant has, or has had, with any U.S. or foreign motor carrier, broker, or freight forwarder registered with the former ICC, FHWA, Office of Motor Carrier Safety, or Federal Motor Carrier Safety Administration within the past 3 years. For example, this relationship could be through a percentage of stock ownership, a loan, a management position, a wholly-owned subsidiary, or other arrangement.

If this requirement applies to applicant, provide the name of the affiliated company, the latter's MC or MX number, its U.S. DOT Number, if any, and the company's latest U.S. DOT safety rating. Applicant must indicate whether these entities have been disqualified from operating commercial motor vehicles anywhere in the United States pursuant to Section 219 of the Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106-159, 113 Stat. 1748)(MCSIA).

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(If applicant requires more space, **attach the information to this application form**.

Name of affiliated company	MC or MX Number	U.S. DOT Number	U.S. DOT Safety Rating	Ever Disqualified under Section 219 of the MCSIA?

SECTION III – TYPE(S) OF REGISTRATION REQUESTED

Applicant must submit a filing fee for each type of registration requested (for each checked box). **If applicant will operate beyond the commercial zone, applicant is not eligible for a Certificate of Registration. Please use Form OP-1(MX) to apply for such authority.**

Applicant seeks to provide the following transportation service:

FOR-HIRE MOTOR CARRIER

- ❑ Service as a **for-hire motor carrier of property (except household goods),** between Mexico and points entirely in a municipality that is adjacent to Mexico, in contiguous municipalities in the U.S., any one of which is adjacent to Mexico, or in a zone that is adjacent to, and commercially a part of the municipality(ies). Under NAFTA Annex I, page I-U-20, a Mexico-domiciled carrier may not provide point-to-point transportation services, including express delivery services, within the United States for goods other than international cargo.

- ❑ Service as a **for-hire motor carrier of household goods** between Mexico and points entirely in a municipality that is adjacent to Mexico, in contiguous municipalities in the U.S., any one of which is adjacent to Mexico, or in a zone that is adjacent to, and commercially a part of the municipality(ies).

MOTOR PRIVATE CARRIER

- ❑ Service as a **motor private carrier of property** (handling applicant's own goods) between Mexico and points entirely in a municipality that is adjacent to Mexico, in contiguous municipalities in the U.S., any one of which is adjacent to Mexico, or in a zone that is adjacent to and commercially a part of the municipality(ies).

SECTION IV – INSURANCE INFORMATION

- ❑ Applicant will operate vehicles having a gross vehicle weight rating (GVWR) of 10,000 pounds or more to transport:
  - ❑ Non-hazardous commodities ($750,000)
  - ❑ Hazardous materials referenced in the FMCSA insurance regulations at 49 CFR § 387.303(b)(2)(c) ($1,000,000).
  - ❑ Hazardous materials referenced in the FMCSA insurance regulations at 49 CFR § 387.303(b)(2)(b) ($5,000,000).
- ❑ Applicant will operate only vehicles having a GVWR under 10,000 pounds to transport:
  - ❑ Any quantity of Division 1.1, 1.2 or 1.3 explosives; any quantity of poison gas (Division 2.3, Hazard Zone A or Division 6.1, Packing Group 1, Hazard Zone A materials); or highway route controlled quantity of radioactive materials ($5,000,000).
  - ❑ Commodities other than those listed above ($300,000).

Does the applicant presently hold public liability insurance?

☐ Yes ☐ No

If applicant does hold such insurance, please provide the information below:

Insurance Company: _____
Address: _____
_____
Maximum Insurance Amount: _____
Policy Number: _____
Date Issued: _____
Insurance Effective Date: _____
Insurance Expiration Date: _____

Does applicant presently operate or has it operated under trip insurance issued for movements in U.S. border commercial zones?

☐ Yes ☐ No

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SECTION V – SAFETY CERTIFICATIONS

Applicant certifies that it is exempt from the U.S. DOT Federal Motor Carrier Safety Regulations (FMCSRs) because it will operate only small vehicles (GVWR under 10,001 pounds) and will not transport hazardous materials.

_____Yes _____No

If applicant answered yes, it must complete the following single safety certification, skip to the end of this section, sign the certification, and complete questions 1 and 2 under the next section – **Safety and Compliance Information and Attachments to Section V.**

Applicant certifies that it is familiar with and will observe general operational safety fitness guidelines and applicable State, local and tribal laws relating to the safe operation of commercial vehicles.

_____Yes

If applicant answered No, it must complete the remaining questions in Section V, sign the certification, and **complete the Safety and Compliance Information and Attachments for Section V**.

Applicant maintains current copies of all U.S. DOT Federal Motor Carrier Safety Regulations, Federal Motor Vehicle Safety Standards and the Hazardous Materials Regulations (if a property carrier transporting hazardous materials), understands and will comply with such Regulations, and has ensured that all company personnel are aware of the current requirements.

_____Yes

Applicant certifies that the following tasks and measures will be fully accomplished and procedures fully implemented before it commences operations in the United States:

1. Driver qualifications:

The carrier has in place a system and procedures for ensuring the continued qualification of drivers to operate safely, including a safety record for each driver, procedures for verification of proper licensing of each driver, procedures for identifying drivers who are not complying with the U.S. and

Mexican safety regulations, and a description of a retraining and educational program for poorly performing drivers.

_____Yes

The carrier has procedures in place to review drivers' employment and driving histories for at least the last 3 years, to determine whether the individual is qualified and competent to drive safely.

_____Yes

The carrier has established a program to review the records of each driver at least once every 12 months and will maintain a record of the review.

_____Yes

The carrier will ensure, once operations in the United States have begun, that all of its drivers operating in the United States are at least 21 years of age and possess a valid Licencia Federal de Conductor (LFC) and that the driver's LFC is registered in the SCT database.

_____Yes

2. Hours of service:

The carrier has in place a record keeping system and procedures to monitor the hours of service performed by drivers, including procedures for continuing review of drivers' log books, and for ensuring that all operations requirements are complied with.

_____Yes

The carrier has ensured that all drivers to be used in the United States are knowledgeable of the U.S. hours of service requirements, and has clearly and specifically instructed the drivers concerning the application to them of the 10 hour, 15 hour, and 60 and 70 hour rules, as well as the requirement for preparing daily log entries in their own handwriting for each 24 hour period.

_____Yes

The carrier has **attached to this application** statements describing the carrier's monitoring procedures to ensure that drivers complete logbooks correctly, and describing the carrier's record keeping and driver review procedures.

_____Yes

The carrier will ensure, once operations in the United States have begun, that its drivers operate within the hours of service rules and are not fatigued while on duty.

_____Yes

3. Drug and alcohol testing:

The carrier is familiar with the alcohol and controlled substances testing requirements of 49 CFR part 382 and 49 CFR part 40 and has in place a program for systematic testing of drivers.

_____Yes

The carrier has **attached to this application** the name, address, and telephone number of the person(s) responsible for implementing and overseeing alcohol and drug programs, and also of the drug testing laboratory and alcohol testing services that are used by the company.

_____Yes

4. Vehicle condition:

The carrier has established a system and procedures for inspection, repair and maintenance of its vehicles in a safe condition, and for preparation and maintenance of records of inspection, repair and maintenance in accordance with the U.S. DOT's Federal Motor Carrier Safety Regulations and the Hazardous Materials Regulations.

_____Yes

The carrier has inspected all vehicles that will be used in the United States before the beginning of such operations and has proof of the inspection on-board the vehicle as required by 49 CFR 396.17.

_____Yes

The carrier's vehicles were manufactured or have been retrofitted in compliance with the applicable U.S. DOT Federal Motor Vehicle Safety Standards.

_____Yes

The carrier will ensure, once operations in the United States have begun, that all vehicles operated in the United States are inspected on an annual basis.

_____Yes

The carrier will ensure, once operations in the United States have begun, that all violations and defects noted on inspection reports are corrected before vehicle and drivers are permitted to enter the United States.

_____Yes

5. Accident monitoring program:

The carrier has in place a program for monitoring vehicle accidents and maintains an accident register in accordance with 49 CFR 390.15

_____Yes

The carrier has **attached to this application** a copy of its accident register for the previous 12 months, or a description of how the company will maintain this register once it begins operations in the United States.

_____Yes

The carrier has established an accident countermeasures program and a driver training program to reduce accidents.

_____Yes

The carrier has **attached to the application** a description and explanation of the accident monitoring program it has implemented for its operations in the United States.

_____Yes

6. Production of records:

The carrier can and will produce records demonstrating compliance with the safety requirements within 48 hours of receipt of a request from a representative of the USDOT/FMCSA or other authorized Federal or State official.

_____Yes

The carrier is including as **an attachment to this application** the name, address and telephone number of the employee to be contacted for requesting records.

_____Yes

7. Hazardous Materials (to be completed by carriers of hazardous materials only).

The HM carrier has full knowledge of the U.S. DOT Hazardous Materials Regulations, and has established programs for the thorough training of its personnel as required under 49 CFR part 172, Subpart H and 49 CFR 177.816. The HM carrier has **attached to this application** a statement providing information concerning (1) the names of employees responsible for ensuring compliance with HM regulations, (2) a description of their HM safety functions, and (3) a copy of the information used to provide HM training.

_____Yes

The carrier has established a system and procedures for inspection, repair and maintenance of its reusable hazardous materials packages (cargo tanks, portable tanks, cylinders, intermediate bulk containers, etc.) in a safe condition, and for preparation and maintenance of records of inspection, repair, and maintenance in accordance with the U.S. DOT Hazardous Materials Regulations.

_____Yes

The HM carrier has established a system and procedures for filing and maintaining HM shipping documents.

_____Yes

The HM carrier has a system in place to ensure that all HM trucks are marked and placarded as required by 49 CFR part 172, Subparts D and F.

_____Yes

The carrier will register under 49 CFR part 107, Subpart G, if transporting any quantity of hazardous materials requiring the vehicle to be placarded.

_____Yes

7A. For Cargo Tank (CT) Carriers (of HM):

The carrier **submits with this application** a certificate of compliance for each cargo tank the company utilizes in the U.S., together with the name, qualifications, CT number, and CT number registration statement of the facility the carrier will be utilizing to conduct the test and inspections of such tanks required by 49 CFR part 180.

_____Yes

_____

Signature of applicant

By signing these certifications, the carrier official is on notice that the representations made herein are subject to verification through inspections in the United States and through the request for and examination of records and documents. Failure to support the representations contained in this application could form the basis of a proceeding to assess civil penalties and/or lead to the revocation of the authority granted.

Safety and Compliance Information and Attachments for Section V

1. Individual responsible for safe operations and compliance with applicable regulatory and safety requirements.

NAME	ADDRESS	POSITION

2. Location where current copies of the Federal Motor Carrier Safety Regulations and other regulations are maintained.

ATTACHMENT FOR SECTION V, NO. 1, DRIVER QUALIFICATIONS
Intentionally Left Blank

ATTACHMENT FOR SECTION V, NO. 2, HOURS OF SERVICE

MONITORING STATEMENTS

Statements describing monitoring procedures for ensuring correctness of logbook completion by drivers and describing record keeping and driver review procedures.

ATTACHMENT FOR SECTION V, NO. 3, DRUG AND ALCOHOL TESTING

Person(s) responsible for implementing and overseeing alcohol and drug programs

NAME	ADDRESS	POSITION

The drug testing laboratory and the alcohol testing services that are used by the carrier.

NAME	ADDRESS	TELEPHONE NO.

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ATTACHMENT FOR SECTION V, NO. 4,
Intentionally Left Blank

ATTACHMENT FOR SECTION V, NO. 5, ACCIDENT MONITORING PROGRAM

1. Describe how company will maintain accident register (49 CFR 390.15(b)) once it begins operations in U.S.

ATTACHMENT FOR SECTION V, NO. 5, ACCIDENT MONITORING PROGRAM

2. Describe and explain accident monitoring program for operations in U.S (49 CFR 391.25 and 391.27).

ATTACHMENT FOR SECTION V, NO. 6, PRODUCTION OF RECORDS

Contact person(s) for requesting records:

Name	Address	Telephone Number

ATTACHMENT FOR SECTION V, NO. 7, HAZARDOUS MATERIALS (TO BE COMPLETED BY CARRIERS OF HAZARDOUS MATERIALS ONLY)

Statement respecting person(s) (other than drivers) responsible for ensuring compliance with HM regulations (49 CFR 172.704) for HM activities.

ATTACHMENT FOR SECTION V, NO. 7A, FOR CARGO TANK CARRIERS OF HM)

Cargo Tank Information (HM)(49 CFR part 180, Subpart E):

SECTION VI - HOUSEHOLD GOODS ARBITRATION CERTIFICATIONS

If applicant will be transporting household goods between Mexico and border commercial zones, it must certify as follows:

Household goods carrier registration is now conditioned on the carrier's agreement to offer arbitration as a means of settling loss and damage claims.

Applicant certifies that it will offer arbitration in accordance with the requirements of 49 U.S.C. § 14708.

_____

Signature

SECTION VII – COMPLIANCE CERTIFICATIONS

All applicants must certify as follows:

- Applicant is willing and able to provide the proposed operations or service and to comply with all pertinent statutory and regulatory requirements and regulations issued or administered by the U.S. Department of Transportation, including operational regulations, safety fitness requirements, motor vehicle safety standards, and minimum financial responsibility requirements.

  _____ Yes

- Applicant has paid any taxes it owes under Section 4481 of the U.S. Internal Revenue Service (26 U.S.C. §4481) for the most recent taxable period as defined under Section 4482(c) of the Internal Revenue Code.

  _____ Yes

- Applicant understands that the agent(s) for service of process designated on FMCSA Form BOC-3 will be deemed applicant's official representative(s) in the United States for receipt of filings and notices in administrative proceedings under 49 U.S.C. 13303, and for receipt of filings and notices issued in connection with the enforcement of any Federal statutes or regulations.

  _____ Yes

- Applicant is willing and able to produce for review or inspection documents which are requested for the purpose of determining compliance with applicable statutes and regulations administered by the Department of Transportation, including the Federal Motor Carrier Safety Regulations, Federal Motor Vehicle Safety Standards and Hazardous Materials Regulations, within 48 hours of any written request. Applicant understands that the written request may be served on the person identified in the attachment for Section V, number 6, or the designated agent for service of process.

  _____ Yes

- Applicant is not presently disqualified from operating a commercial vehicle in the United States pursuant to the Motor Carrier Safety Improvement Act of 1999.

  _____ Yes

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➢ Applicant is not prohibited from filing this application because its FMCSA registration is currently under suspension or was revoked less than 30 days before the filing of this application.

_____ Yes

_____
Signature

All motor carriers operating within the United States, including Mexico-domiciled motor carriers applying for operating authority under this form, must comply with all pertinent Federal, State, local and tribal statutory and regulatory requirements when operating within the United States. Such requirements include, but are not limited to, all applicable statutory and regulatory requirements administered by the U.S. Department of Labor, or by an OSHA State plan agency pursuant to Section 18 of the Occupational Safety and Health Act of 1970. Such requirements also include all applicable statutory and regulatory environmental standards and requirements administered by the U.S. Environmental Protection Agency or a State, local or tribal environmental protection agency. Compliance with these statutory and regulatory requirements may require motor carriers and/or individual operators to produce documents for review and inspection for the purpose of determining compliance with such statutes and regulations.

SECTION VIII – APPLICANT'S OATH

APPLICANT'S OATH MUST BE COMPLETED AND SIGNED BY APPLICANT

I, _____,

(First Name) Middle Name) (Surname) (Title)

verify under penalty of perjury, under the laws of the United States of America, that I understand the foregoing certifications and that all responses are true and correct. I certify that I am qualified and authorized to file this application. I know that willful misstatement or omission of material facts constitute Federal criminal violations under 18 U.S.C. §§ 1001 and 1621 and that each offense is punishable by up to 5 years imprisonment and a fine under Title 18, United States Code, or civil penalties under 49 U.S.C. § 521(b)(2)(B) and 49 U.S.C. Chapter 149.

I further certify that I have not been convicted in U.S. Federal or State courts, after September 1, 1989, of any offense involving the distribution or possession of controlled substances, or that if I have been so convicted, that I am not ineligible to receive U.S. Federal benefits, either by court order or operation of law, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 862).

_____ _____
(Signature) (Date)

_____
(Relationship to applicant, e.g., President or Owner)

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FMCSA FILING FEES

Fee Schedule effective January 1996
Fee for Registration . . . $300.00

FEE POLICY

- Filing fees must be payable to the **Federal Motor Carrier Safety Administration**, by check drawn upon funds deposited in a bank in the United States or money order payable in U.S. currency or by approved credit card.
- Separate fees are required for each **type of registration** requested. If applicant requests registration as a for-hire motor carrier and as a motor private carrier, multiple fees are required. The applicant may submit a single payment for the sum of the applicable fees.
- Filing fees must be **sent along with the original and one copy of the application** to the appropriate address under the paragraph titled **MAILING INSTRUCTIONS** on page 11 of the instructions to this form.
- After an application is received, the filing fee is non-refundable.
- An application submitted with a personal check will be held for 30 days from the date received. The FMCSA reserves the right to discontinue processing any application for which a check is returned due to insufficient funds. No application will be processed until the fee is paid in full.
- **NO FILING FEE IS REQUIRED FOR CURRENT CERTIFICATE OF REGISTRATION HOLDERS WHO OPERATE ONLY IN MUNICIPALITIES IN THE U.S. ON THE U.S.-MEXICO INTERNATIONAL BORDER OR WITHIN THE COMMERCIAL ZONES OF SUCH MUNICIPALITIES AND ARE ONLY UPDATING THEIR APPLICATION INFORMATION**. However, if applicant is expanding the territorial scope of its current operations beyond this area, it must submit a new application using Form OP-1(MX), and a $300 filing fee. The application will be processed as a new application.

FILING FEE INFORMATION

All applicants must submit a filing fee of $300.00 for each type of registration requested. The total amount due is equal to the fee(s) times the number of boxes checked in ***Section III*** of the Form OP-2. Fees for multiple authorities may be combined in a single payment.

Total number of boxes checked in ***Section III*** _____ x filing fee $ _____ = $ _____

INDICATE AMOUNT $_____ AND METHOD OF PAYMENT:

☐ CHECK OR ☐ MONEY ORDER, PAYABLE TO: **FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

☐ VISA ☐ MASTERCARD

Credit Card Number _____

Expiration Date: _____

Signature _____ Date: _____

Form OP-2
Revised March 2002

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Federal Register

Tuesday,
March 19, 2002

Part III

Department of Transportation

Federal Motor Carrier Safety Administration

49 CFR Part 365

Application by Certain Mexico-Domiciled Motor Carriers To Operate Beyond United States Municipalities and Commercial Zones on the United States-Mexico Border; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 365

[Docket No. FMCSA–98–3298]

RIN 2126–AA34

Application by Certain Mexico-Domiciled Motor Carriers To Operate Beyond United States Municipalities and Commercial Zones on the United States-Mexico Border

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: The FMCSA revises its regulations and form, OP–1(MX), governing applications by Mexico-domiciled carriers who want to operate within the United States beyond the municipalities adjacent to Mexico in Texas, New Mexico, Arizona and California and beyond the commercial zones of such municipalities (''border zones''). This interim rule includes requirements that were not proposed in the NPRM, but which are necessary to comply with the Fiscal Year 2002 DOT Appropriations Act enacted into law in December 2001. This action is taken in anticipation of a presidential order lifting the current statutory moratorium on authorizing such operations. The form requires additional information about the applicant's business and operating practices to help the FMCSA to determine if the applicant will be able to meet the safety standards established for operating in interstate commerce in the United States. Carriers that previously submitted an application to operate beyond the border zones must submit the updated form. Any Mexico-domiciled motor carrier (of property) that wants to operate within the United States solely within the border zones must apply under separate FMCSA regulations that we are issuing elsewhere in today's **Federal Register**. The revisions in this action are part of FMCSA's efforts to ensure the safe operation of Mexico-domiciled motor carriers in the United States and implement the 2002 DOT Appropriations Act. This action will ensure that FMCSA receives adequate information to assess an applicant's ability to comply with U.S. safety standards. It requires that all Mexico-domiciled carriers subject to this rule undergo a safety audit before receiving provisional authority to operate in the United States. Therefore, the FMCSA is publishing this action as an interim final rule and is delaying the effective date in order to consider additional public comments regarding pre-authorization safety audits before grants of provisional authority. These changes will result in the FMCSA being able to better maintain an accurate census of Mexico-domiciled carriers operating beyond the border zones.

DATES: This interim final rule is effective May 3, 2002. We must receive comments by April 18, 2002.

ADDRESSES: You can mail, fax, hand deliver or electronically submit written comments to the Docket Management Facility, United States Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001 FAX (202) 493–2251, on-line at *http://dmses.dot.gov/submit.* You must include the docket number that appears in the heading of this document in your comment. You can examine and copy all comments at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. You can also view all comments or download an electronic copy of this document from the DOT Docket Management System (DMS) at *http://dms.dot.gov/search.htm* and typing the last four digits of the docket number appearing at the heading of this document. The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the ''help'' section of the web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Comments received after the comment closing date will be included in the docket and we will consider late comments to the extent practicable. FMCSA may, however, issue a final rule at any time after the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Joanne Cisneros, (909) 653–2299, Transborder Office, FMCSA, P.O. Box 530870, San Diego, CA 92153–0870. Office hours are from 7:45 a.m. to 4:15 p.m., p.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Before 1982, Mexico-domiciled motor carriers could apply for authority to operate within the United States by filing an application for such authority with the former Interstate Commerce Commission (ICC). Under the Bus Regulatory Reform Act of 1982 (the Act), Congress imposed a 2-year moratorium on the issuance of new grants of U.S. operating authority to motor carriers domiciled in a contiguous foreign country, or owned or controlled by persons of a contiguous foreign country. The legislation authorized the President to remove or modify the moratorium upon a determination that such action was in the national interest. The Act was developed in response to complaints that neither Mexico nor Canada were permitting U.S. motor carriers the same access to their markets as Mexican and Canadian motor carriers had to U.S. markets. While the trade issues with Canada were resolved quickly, resulting in the moratorium being lifted for Canada-domiciled motor carriers, the trade issues with Mexico were not addressed until the North American Free Trade Agreement (NAFTA) was negotiated in the early 1990s. Legislative and executive extensions have maintained the moratorium for Mexico-domiciled motor carriers since 1982.

A number of Mexico-domiciled motor carriers have been permitted to operate in the United States because they are not covered by the moratorium. The moratorium only applies to new grants of operating authority. Thus, the operations of Mexico-domiciled motor carriers that had obtained unrestricted operating authority before the moratorium was enacted were unaffected by the moratorium. Additionally, access has been allowed for certain motor carriers whose operations fell outside the ICC's licensing jurisdiction. These carriers receive Certificates of Registration by filing Form OP–2 under the provisions of what is now 49 CFR part 368. These carriers include those that operate solely within the border zones. Also included among these are certain types of carriers whose operations are not restricted to the border zones: U.S.-owned, Mexico-domiciled private carriers; U.S.-owned, Mexico-domiciled carriers of exempt goods; and Mexico-domiciled carriers that only traverse the United States to deliver or pick up cargo or passengers in Canada.

The terms of NAFTA, Annex I, provide that the United States would incrementally lift the moratorium on licensing Mexico-domiciled motor carriers to operate beyond the border zones. Pursuant to the first phase of NAFTA, on January 1, 1994, the President modified the moratorium and the ICC began accepting applications from Mexico-domiciled passenger carriers to conduct international charter

and tour bus operations in the United States. In December 1995, ICC promulgated a rule and a revised application form for the processing of Mexico-domiciled property carrier applications. These rules anticipated the implementation of the second phase of NAFTA, providing Mexico-domiciled property carriers with access to the four U.S. States bordering Mexico, and the third phase, providing access throughout the United States. The ICC designated the revised application form OP–1(MX).

Through the ICC Termination Act of 1995 (ICCTA), Congress authorized the President to remove or modify the moratorium upon the President's determination that such action is consistent with United States obligations under a trade agreement or with United States transportation policy. The ICCTA also dissolved the ICC and transferred the authority to issue new grants of U.S. operating authority for motor carriers and some other of its regulatory functions to the Secretary of Transportation, who delegated this authority to the Office of Motor Carriers (OMC) of the Federal Highway Administration (FHWA).

On December 15, 1995, the International Brotherhood of Teamsters (Teamsters) sought an emergency stay of the ICC rule in the United States Court of Appeals for the District of Columbia. The Teamsters contended that the ICC rule was arbitrary and capricious because it failed to address concerns regarding the safe operation of Mexico-domiciled motor carriers. In their comments on the ICC rule, the Teamsters had requested the ICC to add additional safety questions to the applications filed by Mexico-domiciled carriers to ensure that the applicants were willing and able to comply with applicable safety regulations.

On December 18, 1995, the Secretary of Transportation announced an indefinite delay in implementing the NAFTA motor carrier access provisions. The Court of Appeals subsequently denied the Teamsters' request for an emergency stay of the ICC rule, which became an FHWA regulation upon the termination of the ICC, and set the case for briefing and argument. After the Teamsters' case was briefed and argued, the court ordered the case held in abeyance until the Department decided to commence processing applications of Mexico-domiciled motor carriers seeking authority to operate beyond the border zones. Approximately 190 Mexico-domiciled carriers have filed OP–1(MX) applications with the Department.

Mexico filed complaints against the United States under NAFTA's dispute resolution provisions, challenging the United States' decision to deny further trucking, investment, and bus access. An arbitration panel comprised of five individuals with international trade expertise chosen by the United States and Mexico met in May 2000 to hear the trucking and investment case. The parties engaged in extensive pre- and post-hearing briefing on safety and legal issues.

The panel issued a final report on February 6, 2001, that unanimously concluded that the blanket refusal to process applications of Mexico-domiciled motor carriers seeking U.S. operating authority out of concerns over the carriers' safety was in breach of NAFTA obligations of the United States, specifically NAFTA's provisions ensuring national treatment and most-favored-nation treatment for cross-border services. The panel also unanimously decided that the United States' refusal to permit Mexican nationals to invest in U.S. enterprises that provide transportation of international cargo within the United States violated the United States' NAFTA obligations. In June 2001, the President lifted this part of the moratorium.

With respect to its decision on the U.S. refusal to implement NAFTA's truck access provisions, the panel stated that it did not disagree that truck safety is a legitimate regulatory objective and that it was not limiting U.S. application of its truck safety standards to Mexican carriers operating in the United States provided that they are applied in a manner that is consistent with the United States' NAFTA obligations. The panel noted that compliance with NAFTA obligations did not require the granting of operating authority to Mexican trucking companies that might be unable to comply with U.S. safety regulations. The panel observed that the United States might not be required to treat applications for operating authority from Mexican trucking firms in exactly the same manner as applications from U.S. or Canadian firms, as long as the applications are reviewed on a case-by-case basis. The panel stated that to the extent that Mexican licensing and inspection requirements might not be like U.S. requirements, the United States might be justified in using methods to ensure Mexican carrier compliance with the U.S. regulatory regime that differ from those used for U.S. and Canadian carriers, provided that such different methods are used in good faith to address legitimate safety concerns and fully conform with all relevant NAFTA provisions.

It is important to note that this interim final rule and the two related rules published elsewhere in today's **Federal Register** represent only part of the FMCSA's effort to ensure the safe operation of Mexico-domiciled motor carriers in the United States. For example, Mexico-domiciled motor carriers, their vehicles, and their drivers operating in the United States have been and will continue to be subject to all of FMCSA's safety requirements, inspection procedures, enforcement mechanisms, and fines and out-of-service orders. In addition to being subject to the various safety audits and compliance reviews contained in these rules, these carriers and their vehicles and drivers will continue to be subject to roadside vehicle inspections performed at the border and throughout the United States by FMCSA inspectors and their State partners. FMCSA has received additional funding from Congress to enhance its inspection capabilities at the border. The FMCSA is also conducting seminars in Spanish for Mexican carriers to help ensure that they understand U.S. safety requirements. FMCSA personnel also expect to continue their cooperative efforts with their Mexican Government counterparts toward enhancing Mexico's motor carrier regulatory regime.

The DOT's Research and Special Programs Administration (RSPA) has made considerable progress in harmonizing the hazardous materials standards of the United States and Mexico. Though Mexican hazardous materials standards are not as comprehensive as U.S. standards, those in place are compatible with U.S. standards.

RSPA has also made significant strides in educating Mexico-domiciled hazardous materials shippers and carriers in hazardous materials safety. In 1993, it translated the U.S. Emergency Response Guide into Spanish. Since then, Mexican emergency response information requirements have been harmonized with existing U.S. emergency response information requirements. The U.S., Mexican and Canadian Governments now jointly issue an Emergency Response Guide. RSPA has also translated various hazardous materials brochures and pamphlets into Spanish as well as identified free hazardous materials industry resources to assist the Mexican Government's Secretaria de Comunicaciones y Transportes (SCT) in providing hazardous materials and

emergency response training for its inspectors.

Section 350 of the 2002 DOT Appropriations Act, Public Law 107–87 (Act), prohibits the Secretary of Transportation from obligating or expending funds for reviewing or processing applications of Mexico-domiciled motor carriers for authority to operate beyond the United States municipalities and commercial zones on the United States-Mexico international border until the FMCSA and DOT complete several enumerated actions. Many of the requirements of the Act have been incorporated into this interim final rule and the two companion rules published elsewhere in today's **Federal Register**. Under this interim final rule FMCSA will: (1) Conduct safety examinations or audits on Mexico-domiciled carriers seeking authority to operate beyond the border zones encompassing the nine areas of inquiry required by section 350(a)(1)(B); (2) assign a distinctive U.S. DOT number to each Mexico-domiciled motor carrier operating beyond the border zones, in accordance with section 350(a)(4); (3) require Mexico-domiciled motor carriers operating beyond the border zones to certify that they will have their vehicles inspected by Commercial Vehicle Safety Alliance (CVSA)-certified inspectors every three months, in accordance with section 350(a)(5); and (4) require Mexico-domiciled carriers to provide proof of valid insurance issued by an insurance company licensed in the United States before granting them authority to operate beyond the border zones, in accordance with section 350(a)(8).

FMCSA invites comments about how the interim final rule incorporates these new section 350 provisions into the application and approval process.

Summary of Notice of Proposed Rulemaking (NPRM)

The FMCSA proposed changes to its regulations and application procedures for Mexico-domiciled motor carriers desiring to operate within the United States under the NAFTA liberalized access provisions in the May 3, 2001 **Federal Register** (66 FR 22371). Applicants wanting to conduct transportation services within the United States beyond the border zones would submit a redesigned Form OP–1(MX). The proposed application solicited information to indicate the nature of the operation, demonstrate the applicant's knowledge of the basic requirements of the Federal Motor Carrier Safety Regulations (FMCSRs) and describe how it intended to comply with these regulations. Furthermore, we proposed to require each applicant to make specific certifications of compliance, such as requiring an applicant to submit verification from the Mexican Government that it is a registered Mexico-domiciled carrier authorized to conduct motor carrier operations up to the United States-Mexico border and that all drivers who operate in the United States have a valid Licencia Federal de Conductor (LFC) issued by the Government of Mexico. The applications would also be subject to the other procedures set forth in part 365 for applications in the OP–1 series (e.g., protests and publication in the FMCSA Register).

Discussion of Comments to the NPRM

In response to the three NPRMs relating to NAFTA implementation, the FMCSA received over 200 comments. Over 90 percent of the comments opposed the safety monitoring system or the border opening. Most of the comments focused on the proposed safety monitoring system (66 FR 22415) and will be fully discussed elsewhere in today's **Federal Register**. A large percentage of the commenters addressed all three rules together in a single submission that may have been filed in one or all three public dockets. We have carefully considered them and have revised the Form OP–1(MX) application form and the regulations governing the application process as noted in the preamble sections titled ''Discussion of the Interim Final Rule'' and ''Final Revisions to Form OP–1(MX).'' In this section, FMCSA responds to the comments on Form OP–1(MX) (and common elements to Form OP–2) and part 365.

The Friends of the Earth, Natural Resources Defense Council, Sierra Club, and Center for International Law (Friends of the Earth *et al.*) jointly commented that FMCSA is required to perform additional analysis to meet the requirements of the National Environmental Policy Act (NEPA) and Executive Order 13045, concerning the protection of children from environmental and health and safety risks. The International Brotherhood of Teamsters (Teamsters) also expressed this viewpoint. The Friends of the Earth *et al.* believe that 40 CFR 1501.3(b) requires that if DOT is not certain that an environmental impact statement is required, then it must first prepare an environmental assessment. Regarding compliance with Executive Order 13045, the Friends of the Earth *et al.* believe that this action presents increased pollution and safety concerns that pose a disproportionate risk to children.

The FMCSA is preparing an agency order to meet the requirements of DOT Order 5610.1C (that establishes the Department of Transportation's policy for compliance with NEPA by the Department's administrations). The FMCSA has conducted a programmatic environmental assessment (PEA) of the three rulemakings in accordance with the DOT Order and the regulations of the Council on Environmental Quality. A discussion of the PEA and its findings and the FMCSA's responsibilities under E.O. 13045 is presented later in the preamble under ''Regulatory Analyses and Notices.'' A copy of the PEA is in the docket to this rulemaking.

The Attorney General for the State of California submitted a comment in which he asserted that the FMCSA would be required to perform a ''conformity determination'' pursuant to the Clean Air Act (CAA), before finalizing these rulemakings. Under the CAA, Federal agencies are prohibited from supporting in any way, any activity that does not conform to an approved State Implementation Plan (SIP), (42 U.S.C. 7006). EPA regulations implementing this provision require Federal agencies to determine whether an action would conform with the SIP (a ''conformity determination''), before taking the action (40 CFR 93.150). The Attorney General asserts that the FMCSA must make a conformity determination before taking final action to implement regulations that would allow Mexican trucks to operate beyond the border. The Attorney General provided technical information to support his assertion that allowing Mexican trucks to operate beyond the border would likely not be in conformity with California's SIP.

We have reviewed our obligations under the CAA, and believe that we are in compliance with the general conformity requirements as implemented by the U.S. Environmental Protection Agency (EPA). EPA's implementing regulations exempt certain actions from the general conformity determination requirements. Actions which would result in no increase in emissions or clearly a de minimis increase, such as rulemaking (40 CFR 93.153(c)(iii)), are exempt from requiring a conformity determination. In addition, actions which do not exceed certain threshold emissions rates set forth in 40 CFR 93.153(b) are also exempt from the conformity determination requirements. The FMCSA rulemakings meet both of these exemption standards. First, as noted elsewhere in this preamble to this rule, the actions being taken by the FMCSA are rulemaking actions to improve

FMCSA's regulatory oversight, not an action to modify the moratorium and allow Mexican trucks to operate beyond the border. Second, the air quality impacts from each of the FMCSA's rules neither individually nor collectively exceed the threshold emissions rates established by EPA (see Appendix C of the Environmental Assessment accompanying these rulemakings for a more detailed discussion of air quality impacts). As a result, we believe that FMCSA's rulemaking actions comply with the CAA requirements, and that no conformity determination is required.

The American Insurance Association (AIA) commented that the OP–1(MX) form does not make clear the fact that layered insurance filings (primary and excess securities) are acceptable. The AIA suggested modifying the form to make it clear. The FMCSA does not find this modification to be necessary because the acceptability of layered insurance filings is clearly explained in 49 CFR part 387, subpart C.

The International Brotherhood of Teamsters (Teamsters) commented that the financial responsibility section of the form should be modified to make clear that we would not grant provisional operating authority until we receive the appropriate filings for financial responsibility and service of process agents from the applicant and its financial responsibility agent(s). The AFL–CIO's Transportation Trades Department (TTD) commented that various statements and certifications could be made more understandable. The FMCSA will verify that a carrier has the necessary financial responsibility as part of the pre-authorization safety audit. However, there will be no DOT number issued at that time under which a filing may be made. Therefore, we will permit insurance companies to file evidence of insurance with FMCSA after provisional authority is granted. However, provisional operating authority will not be valid, and the carrier may not operate under that authority, until an insurance filing is made with, and accepted by, the agency. This is consistent with the procedure applicable to U.S. and Canadian carriers required to obtain operating authority under 49 U.S.C. 13901. In a similar vein, we are giving applicants the option of including with the application a notification that a process agent service will electronically file the necessary process agent information within 90 days. As is the case with U.S. and Canadian carriers subject to 49 U.S.C. 13901, a Mexico-domiciled carrier may not operate in the United States until the process agent filing is made with, and accepted by, the agency.

United Parcel Service (UPS) commented that the application and regulations for Mexico-domiciled carriers requesting operating authority should identify express delivery as a separate kind of carrier operation. UPS explains that this distinction would enable the United States to accelerate the timeline for lifting the moratorium for express delivery services, without awaiting action on general trucking.

We do not see the need at this time for the rules to distinguish between express delivery services and general trucking services. We do not expect that the moratorium will be lifted for express delivery services before the lifting of the moratorium on general trucking. In addition, the United States maintains a reservation under the NAFTA on the transportation of goods other than international cargo between points in the United States, and the reservation covers both express delivery services and other motor carrier services.

The Owner-Operator Independent Drivers Association, Inc. (OOIDA) and the California Trucking Association (CTA) recommended that the form specify the additional U.S. laws to which Mexico-domiciled carriers would be subject. The OOIDA commented that since NAFTA requires Mexico-domiciled carriers to comply with U.S. laws and all applicable State laws when operating within the United States, the FMCSA should set forth the particular U.S. laws to which applicants are subject. They believe form references to other laws are too vague and should be more fully enumerated. The CTA recommends modifying the form to require an applicant to certify that it will comply with the laws of other U.S. agencies.

The FMCSA believes that it is beyond the scope of this rulemaking to provide an exhaustive listing and explanation on the OP–1(MX) form of all Federal and State laws to which carriers are subject when operating within the United States. However, we are conducting information sessions for potential applicants where, among other things, we discuss additional information provided by other Federal agencies and State registration requirements. This information will also be on the FMCSA web site.

We have worked closely with other Federal agencies, including the U.S. Department of Labor (DOL), U.S. Environmental Protection Agency (EPA) and others, in drafting and clarifying the statement that appears after the signature line of Section VIII—Compliance Certifications. This statement underscores the importance of complying with all pertinent Federal, State, local and tribal statutory and regulatory requirements, including labor, environmental, and immigration laws. Such compliance includes producing requested records for review and inspection. It also includes compliance by drivers who must meet the requirements under the Immigration and Nationality Act, 8 U.S.C. 1101 *et seq.*, and pass inspection by inspectors of the Immigration and Naturalization Service at the port of entry.

The American Trucking Associations, Inc. (ATA), OOIDA, the Teamsters, and the TTD expressed concern that the hazardous materials requirements listed in the safety certification statements were incomplete, suggesting a more comprehensive listing of requirements, including the hazardous material registration requirement. They suggested additional hazardous materials documentation to be submitted with the application. The Transportation Lawyers Association (TLA) believes that the current and proposed application procedures have a loophole regarding identification of hazardous materials carriers. It contends that the ''check the block'' system, and the fact that none of the information described in the hazardous materials certification statements must be submitted with the application, enable the hazardous materials transporter to escape detection. Neither the form nor application procedures require a carrier who later decides to transport hazardous materials to notify the FMCSA or provide evidence of knowledge of hazardous materials standards—only to increase the amount of insurance carried.

We have corrected and modified the hazardous material certifications in response to these comments. The hazardous materials certification statements have been revised to more thoroughly reference applicable hazardous materials requirements and request the supplemental information required by the Hazardous Materials Regulations. Please reference the section ''Final Revisions to the Form OP–1(MX)'' for a detailed discussion of revisions to the certification statements. Information regarding hazardous materials operations will be verified during the pre-authorization safety audit established in this interim final rule pursuant to section 350 of the DOT Appropriations Act.

Section 350 of the Act prohibits Mexico-domiciled motor carriers from transporting hazardous materials in a placardable quantity beyond the border zones until the United States has completed an agreement with the Government of Mexico ensuring that

drivers of such placardable quantities of hazardous materials meet substantially the same requirements as U.S. drivers carrying such materials. Section 1012(b) of the ''Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001'' (USA PATRIOT Act) [Pub. L. 107–56, October 26, 2001] amended the Hazardous Materials Transportation Act (49 U.S.C. 5101–5127) and the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. 31301–31317) by placing limitations on the issuance or renewal of hazardous materials licenses. (The DOT interprets the term ''hazardous materials licenses'' to mean a hazardous materials endorsement for a commercial driver's license because of the reference to section 31305 in section 1012(b).) The OP–1(MX) form will require additional information regarding cargo tank certification, hazardous materials training, and persons responsible for ensuring compliance with the Hazardous Materials Regulations.

The CTA commented that the FMCSA should distribute an applicant's Single State Registration System (SSRS) filing to the appropriate SSRS members. The FMCSA does not have the resources to coordinate the SSRS filings for Mexico-domiciled carriers. We have also removed specific references to the SSRS from the form instructions (although the requirement still remains), because it is one of many State requirements. We do not wish to imply that the SSRS requirement is the sole State requirement for Mexico-domiciled carriers or that it has greater importance than other laws or regulations.

The TLA commented that the definition of private carrier in the instructions to the application form includes a phrase that has historically described a for-hire carrier and suggests that the form be modified. In Section III of the instructions, a motor private carrier is defined as an entity that is ''transporting its own goods, including an entity that is performing such operations under an agreement or contract with a U.S. shipper or other business.''

This definition is an attempt to rephrase, in plain language, the text of 49 U.S.C. 13102(7). Section 13102(7) defines foreign motor private carrier to include persons (except motor carriers of property or motor private carriers) that provide interstate transportation of property by motor vehicle under agreements or contracts with persons who are not motor carriers of property or motor private carriers. The form instructions may be confusing because they do not reference the for-hire motor carrier exclusion in defining a private carrier. Therefore, we have modified the form to provide clarity.

Camara Nacional del Autotransporte de Cargo (CANACAR) commented that we must more fully explain the need for a process agent in the United States and link this requirement directly to safety and NAFTA. CANACAR believes we should require only one process agent in the United States. It commented that requiring more than one would violate NAFTA.

Contrary to CANACAR's suggestion, nothing in the NAFTA limits the rights of the United States to require firms to designate more than one process agent. Requiring Mexico-domiciled carriers to comply with 49 CFR part 366 would not violate NAFTA because the same requirement applies to U.S. and Canadian motor carriers. A process agent service may be used to maintain service of process agents in multiple States, thus eliminating the need for carriers themselves to retain agents in each State. A process agent service is an association or corporation that files with the FMCSA a list of process agents for each State in which the carrier intends to operate.

CANACAR believes that FMCSA must remove registration requirements for agricultural, private, and exempt carriers, because we do not require U.S. and Canadian agricultural, private, and exempt carriers to register under 49 U.S.C. chapter 139.

The Motor Carrier Safety Act of 1984, Public Law 98–554, 98 Stat. 2832, required Mexican motor carriers conducting operations otherwise exempt from the economic regulation requirements (i.e., for-hire carriers of exempt commodities, agricultural and private carriers) to register with the Interstate Commerce Commission to conduct operations in the United States. These requirements are an important element of FMCSA's effort to ensure the safe operation of Mexican motor carriers on U.S. highways. From a safety standpoint, there is no distinction between agricultural, private, and exempt carriers and the Mexican carriers that would otherwise be required to register.

CANACAR also believes that the OP–1(MX) and OP–2 form questions about affiliates will violate section 219 of the Motor Carrier Safety Improvement Act (MCSIA), which it interprets to mean that ''once NAFTA is implemented'' questions about affiliates would no longer be needed. CANACAR commented that section 219 of MCSIA only applies to ''carriers'' and not ''nationals.''

The FMCSA will continue to require OP–1(MX) applicants to submit information on affiliations because it is useful in deterring operations by disqualified carriers. Section 219 of MCSIA authorizes FMCSA to penalize and disqualify foreign motor carriers for operating beyond the border zones before the implementation of NAFTA, but it does not prohibit enforcement after NAFTA's implementation (nor the collection of information on a foreign carrier's affiliations). FMCSA requires similar information from U.S. and Canadian applicants to ensure that unsafe carriers do not evade out-of-service orders or registration suspensions by continuing operations under a different identity.

The Free Trade Alliance San Antonio recommends that we provide a sample completed OP–1(MX) form, including attachments, as a guide to applicants. The FMCSA will address this comment in training materials and in our workshops for potential applicants.

The TLA commented that the proposed forms require a carrier operating ''small vehicles (GVWR under 10,000 pounds)'' to certify that ''it is exempt from the U.S. DOT Federal Motor Carrier Safety Regulations * * * .'' The TLA believes that the certification does not accurately reflect the accompanying instructions stating that an ''exempt'' carrier ''must certify that [it is] familiar with and will observe general operational safety fitness guidelines and applicable State and local laws relating to the safe operation of commercial motor vehicles.'' The TLA further commented that the safety certification mentioned in the instructions was originally authored by the ICC in response to comments filed by it in Ex Parte No. 55 (Sub-No. 94), *Revision of Application Procedures and Corresponding Regulation,* 10 ICC 2d 386, 398–399 (1994). The TLA commented that certification that a carrier who is exempt from the FMCSRs, ''will observe'' applicable Texas State Law is meaningless. The TLA believes that local law has no ability to influence a carrier's adherence to good highway safety practices beyond its extremely limited reach.

Carriers that are exempt from direct DOT oversight-because they operate smaller vehicles which generally operate only locally and do not pose a significant enough public threat to warrant Federal involvement-are nonetheless subject to State safety oversight. Many MCSAP States have not fully exempted smaller vehicles from their safety oversight and are not required to exempt them under MCSAP. Consistent with the Congressional

mandate that safety is our highest priority, the FMCSA will require that OP–1(MX) applicants certify their willingness to inform themselves concerning any State, local and tribal safety laws to which they are subject and to pledge to abide by them.

The Teamsters commented that instead of the check boxes on the form, we should require narratives describing systems and procedures that the applicant now uses or intends to use in the future. They contend that all applicants should be required to submit accident records with the applications and that ''* * * (A)ny responsible carrier would have the information required to compile such a record at the time the application is prepared'' even if it had not been maintaining an accident record as such. The TLA recommends that we require a narrative response about the content of an applicant's household goods arbitration program.

The FMCSA will evaluate information provided in the OP–1(MX) form and will conduct a safety audit of each carrier before deciding to grant provisional operating authority and allowing it to commence operations in the United States. Requests for additional narrative descriptions have been restricted to information necessary to evaluate an applicant's willingness and ability to comply with our safety standards and are not meant to be overly burdensome. The FMCSA will not burden Mexico-domiciled carriers with a requirement to provide a narrative description of their household goods arbitration programs because it is not critical to the safety mission of the agency and can be evaluated during the pre-authorization safety audit.

The Teamsters and Public Citizen commented that applicants should complete a proficiency exam testing their knowledge of the FMCSRs as a part of the application procedure, as allowed by MCSIA. The FMCSA does not find it necessary to require a proficiency exam at this time given the detailed requirements of this interim final rule. These detailed requirements include the application, including safety certifications, the pre-authorization safety audit, and the requirement in the Act that Mexico-domiciled commercial vehicles be inspected at each border crossing during the time they hold provisional authority and until they hold permanent authority for three consecutive years, unless the vehicles have a current CVSA inspection sticker affixed to the vehicle. Identifying the appropriate company individual to take the proficiency test would be problematic as well. In addition, it is not clear that a proficiency exam requirement would meaningfully enhance safety because it would only test the ''proficiency'' of a single carrier employee.

The Teamsters also commented that we should require financial reporting based on the Mexico-domiciled applicant's prior year revenue. Since the nature of a Mexico-domiciled carrier's business within Mexico may be unrelated to planned operations within the United States, that information might not be valid for the purpose of evaluating its fitness to operate within the United States. FMCSA also believes this suggestion is outside of the scope of this rulemaking and FMCSA jurisdiction.

Public Citizen believes the proposed application process for Mexico-domiciled trucks will not ensure compliance for several reasons. First, the SCT database to be used in evaluating a Mexico-domiciled carrier's safety fitness is ''unpopulated'' and ''currently lacks the basic information necessary to process applications or to perform a safety review.'' It proposes as a precondition for granting operating authority that FMCSA set minimum levels of inspection, crash, and other performance and enforcement data to be amassed for an applicant. For example, there must be sufficient data to calculate a score in Safestat(tm), the information system used to determine a domestic carrier's safety fitness. Public Citizen also believes that information reported on the form may be distorted through error or fraud, and the driver's safety records may not be available. It commented that insurance and proof of insurance requirements are dangerously inadequate to protect other drivers on public highways.

The SCT database inquiry is but one component of the planned safety evaluation of OP–1(MX) applicants. The FMCSA will use information in its own databases and will conduct a pre-authorization safety audit to validate an applicant's responses and assess its safety fitness. Furthermore, the insurance requirements for Mexico-domiciled carriers are identical to those applicable to domestic and Canadian carriers. Minimum levels of financial responsibility are set forth in 49 CFR part 387. The FMCSA will verify proof of financial responsibility during the pre-authorization safety audit. Furthermore, a Mexico-domiciled carrier will be unable to operate in the United States beyond the border zones unless evidence of adequate financial responsibility is filed with the FMCSA by an insurance company licensed in the United States. Evidence of insurance must also be maintained on the motor vehicle when operating within the United States and border inspectors will verify proof of financial responsibility electronically by checking the FMCSA's insurance database.

The CTA commented that applicants should file proof of insurance with the application, rather than after FMCSA grants the applicant operating authority. Current 49 CFR part 387 requires the insurer, not the applicant, to make insurance filings with the FMCSA. This requirement allows insurance companies to retain control of the insurance certification documents, thereby significantly decreasing opportunities for fraudulent activity. Section 350(a)(8) of the Act, however, requires the FMCSA to verify proof of financial responsibility with a financial responsibility provider licensed in the United States during the pre-authorization safety audit. Although FMCSA will independently verify a Mexico-domiciled motor carrier applicant's proof of financial responsibility during the pre-authorization audit, the carrier will not have been issued a DOT number under which a filing may be made. Therefore, we will not require actual filing of the insurance at the time of the audit. However, once the carrier is granted provisional operating authority, it must have evidence of acceptable insurance on file with the FMCSA before it may operate within the United States.

A number of parties, including OOIDA, Public Citizen, and the Teamsters, urged that Mexico-domiciled motor carriers should not be allowed to operate beyond the border zones at this time, citing what they view as an inadequate Mexican Government motor carrier safety infrastructure, inadequate inspection facilities at border crossings, and other factors. The Teamsters, for example, note that for these reasons full implementation of NAFTA's motor carrier access provisions is premature and urge FMCSA to ''postpone the border opening.''

FMCSA believes that the regulations being published today, and the other safety measures the agency is taking with respect to Mexico-domiciled motor carriers operating outside the border zone, will give the agency sufficient assurance that these carriers are capable of complying with U.S. safety standards, notwithstanding any shortcomings in the Mexican Government's motor carrier safety infrastructure. FMCSA also believes that, in conjunction with its State partners, it will be able to maintain an adequate safety inspection program at the border. It should be noted, however, that these and other

comments urging a delay in the implementation of NAFTA assume that the regulations published today ''open the border'' or lift the current moratorium on the granting of operating authority. The regulations do neither. The President, not the FMCSA, has that authority pursuant to 49 U.S.C. 13902. The President has announced that the United States will comply with its NAFTA obligations regarding Mexico-domiciled motor carrier access in a manner that will not weaken motor carrier safety. The regulations help ensure motor carrier safety in anticipation of presidential action lifting the moratorium.

In addition, section 350(c)(1) of the Act requires the DOT Inspector General (OIG) to conduct a comprehensive review of FMCSA border operations before the FMCSA may spend any Federal funds to review or act on OP–1(MX) applications. The OIG must assess whether the statutory requirements have been met to ensure the opening of the border does not pose an unacceptable safety risk to the American public. Section 350(c)(2) also requires the Secretary of Transportation to certify in writing in a manner addressing the Inspector General's findings that the opening of the border does not pose an unacceptable safety risk to the American public before the FMCSA may spend any Federal funds to review or act on OP–1(MX) applications.

ABA and Greyhound urge that we not implement our motor carrier-related NAFTA obligations until Mexico reciprocates by implementing its motor carrier-related NAFTA obligations. Again, none of the regulations published today ''open the border'' or lift the current moratorium on the grant of operating authority. In any event, NAFTA itself provides procedures to ensure that each party fulfills its obligations under the Agreement.

In response to comments about the need for ensuring that vehicles operated by Mexico-domiciled motor carriers comply with the applicable Federal Motor Vehicle Safety Standards (FMVSS), we note that enforcement of these safety standards by FMCSA and its State partners will be accomplished through roadside inspections, including inspections at the border. Roadside inspections provide a means of ensuring that vehicles meet the applicable FMVSSs in effect on the date the vehicle was manufactured.

Title 49 CFR part 393 of the FMCSRs currently includes cross-references to most of the FMVSSs applicable to heavy trucks and buses. The rules require that motor carriers operating in the United States, including Mexico-domiciled carriers, must maintain the specified safety equipment and features that the National Highway Traffic Safety Administration (NHTSA) requires vehicle manufacturers to install. Failure to maintain these safety devices or features is a violation of the FMCSRs. If the violations are discovered during a roadside inspection, and they are serious enough to meet the current out-of-service criteria used in roadside inspections (i.e., the condition of the vehicle is likely to cause an accident or cause a mechanical breakdown), the vehicle would be placed out of service until the necessary repairs are made. The FMCSA also has the option of imposing civil penalties for violations of 49 CFR part 393. Any FMVSS violations that involve noncompliance with the standards presently incorporated into part 393 could subject motor carriers to a maximum civil penalty of $10,000 per violation. If the FMCSA determines that Mexico-domiciled carriers are operating vehicles that do not comply with the applicable FMVSSs, this information could be used to take appropriate enforcement action for making a false certification on the application for operating authority.

The FMCSA and NHTSA are initiating several regulatory actions (published elsewhere in today's **Federal Register**) to ensure that labeling requirements of the FMVSSs are enforced against motor vehicles entering the United States. The FMCSA is proposing to amend the FMCSRs to require that all motor carriers ensure that their CMVs have a certification label that meets the requirements of 49 CFR part 567, applied by the vehicle manufacturer or by a registered importer. United States motor carriers typically would only have access to vehicles that meet the applicable FMVSSs and have a certification label that meets the requirements of 49 CFR part 567, but Mexico-domiciled and Canada-domiciled carriers purchasing vehicles for operation within their respective countries may be using vehicles which have not been certified as FMVSS-compliant.

The FMCSA is proposing that U.S. motor carriers comply with the certification label proposal on the effective date of the FMVSS certification rule. The agency is also proposing that foreign motor carriers that begin operations in the United States on or after the effective date of the certification label rule, or expand their operations to go beyond the border zones for the first time, ensure that all CMVs used in the new or expanded operations have the necessary certification label before entering the United States. All other Canada and Mexico-domiciled motor carriers operating in the United States prior to the effective date of the interim final rule would be allowed 24 months to bring their vehicles into compliance with the certification requirements.

NHTSA is taking three separate actions relating to the certification label. The first action is publication of a policy statement that addresses commercial motor vehicles that were not originally manufactured for sale in the United States, and thus were not required at the time of manufacture to be certified as complying with the FMVSSs, but are subsequently sought to be imported into the United States. The statement provides that a vehicle manufacturer may, if it has sufficient basis for doing so, retroactively apply a label to a commercial motor vehicle certifying that the vehicle complied with all applicable FMVSSs in effect at the time it was originally manufactured.

NHTSA recognizes that there are many commercial motor vehicles used by motor carriers in Mexico and Canada that were manufactured in accordance with the FMVSSs, but were not certified as complying with those standards because the vehicles were manufactured for sale in Canada or Mexico. NHTSA is proposing two additional actions related to the FMVSS and foreign-domiciled motor carriers. The first would establish recordkeeping requirements for foreign manufacturers that retroactively certify vehicles. The second would codify, in 49 CFR Part 591, its long-standing interpretation of the term ''import,'' as used in the National Traffic and Motor Vehicle Safety Act of 1966, Public Law 89–563, to include bringing a commercial motor vehicle into the United States for the purpose of transporting cargo or passengers.

Discussion of the Interim Final Rule

The FMCSA has made changes in this interim final rule to the proposed revisions to part 365, based on the comments, section 350 of the 2002 DOT Appropriations Act, and our own review of the proposal.

Section 365.503 has been revised to allow both hard copy and electronic submission of required information on designation of process agents (Form BOC–3) as part of the application process. The FMCSA currently allows only process agent services to electronically file the Form BOC–3. If a carrier elects to use a process agent service, it must include a letter to that effect with the Form OP–1(MX) and ensure that the service electronically files the Form BOC–3 with the FMCSA.

Otherwise, the hard copy Form BOC–3 must accompany the application. The carrier may not begin operations until the Form BOC–3 has been filed with the FMCSA.

Section 365.505 has been revised to extend to 18 months the deadline for filing Form OP–1(MX) by carriers holding a Certificate of Registration issued before April 18, 2002, authorizing operations beyond the municipalities along the U.S.-Mexico border and beyond the commercial zones of such municipalities. These carriers, as well as those carriers who filed the previous version of the OP–1(MX) application form, do not need to submit another fee when filing a new OP–1(MX) application. The FMCSA may suspend or revoke the Certificate of Registration of any carrier that fails to comply with this re-registration requirement and 18-month deadline. Certificates of Registration issued before April 18, 2002, will remain valid until the FMCSA acts on the newly submitted OP–1(MX) application.

The FMCSA has revised the heading of § 365.507 in both the table of sections and the regulatory text to ''FMCSA action on the application'' to accurately reflect how the FMCSA will consider and act on each application. The section now provides that the FMCSA will validate all data and certifications in an application with information in its own databases, in the appropriate databases of the Mexican Government to which it has access as part of the NAFTA implementation process, and with information discovered during a pre-authorization safety audit. The FMCSA will grant provisional operating authority if it determines that the application and the results of the safety audit are consistent with the FMCSA's safety fitness policy. The safety fitness criteria published in new Appendix A to part 365 for the pre-authorization safety audit is similar to the safety fitness criteria for post-operational safety audits for Mexico-domiciled carriers in new Appendix A to part 385 that is being published elsewhere in today's **Federal Register**. We will also assign a distinctive USDOT Number that distinguishes the carrier as a Mexico-domiciled carrier authorized to operate beyond the border zones.

In the companion rule establishing a safety monitoring system for new entrant Mexico-domiciled carriers (published elsewhere in today's **Federal Register**), FMCSA will require commercial motor vehicles to have a valid CVSA inspection decal denoting a successful inspection of the commercial motor vehicle at all times while operating under provisional operating authority in the United States beyond the border zones. Provisional authority to operate beyond the border zones cannot become permanent for at least 18 months, until the carrier has successfully completed an 18-month safety monitoring program, including a compliance review resulting in the assignment of a Satisfactory safety rating as required by § 350(a)(2) of the 2002 DOT Appropriations Act.

Section 365.511 has been added in response to the 2002 DOT Appropriations Act. This section will require that a Mexico-domiciled carrier must continue to seek out and have CVSA inspectors perform CVSA Level I inspections for the first three consecutive years after being granted permanent operating authority.

We have made conforming amendments to §§ 365.101(h) and 365.105(a). We revised § 365.101(h) to reflect the expanded scope of operations authorized by the Form OP–1(MX)-from Mexico to all points in the United States. The previous reference to the four border States was originally designed to register applicants to operate from Mexico to points only within the border States of California, Texas, Arizona and New Mexico.

There are three revisions to § 365.105(a). First, we have specified that household goods carriers and motor passenger carriers are required to submit the OP–1(MX) when applying to operate within the United States beyond the border zones. The previous regulations generally required motor property carriers to use the form. Next, we removed an obsolete reference to Form OP–1(W) because we do not have authority to register water carriers. Finally, we updated the cross-reference to filing fee requirements to reflect the recodification of these requirements in 49 CFR part 360.

Revisions to Form OP–1(MX)

The interim final rule reflects numerous typographical corrections and adjustments to the OP–1(MX) application form to make it consistent with the OP–2 form. All requests for supplemental information that must accompany the application are in bold typeface so that they are conspicuous to the applicant. The substantive revisions are discussed below.

The OP–1(MX) application instructions have been revised to discontinue the requirement that applicants submit Internal Revenue Service (IRS) Form 2290, Schedule 1 (Schedule of Heavy Highway Vehicles) with the OP–1(MX) application. Unlike the OP–1(MX) application procedure, taxes imposed by 26 U.S.C. 4481 are assessed annually. The IRS Form 2290 would only provide evidence of compliance for the current year. However, the applicant must still certify compliance with 26 U.S.C. 4481 under Section VIII of the application.

The instructions clarify the definition of ''applicant'' for purposes of determining who must sign the various certifications and the Section IX—Application Oath.

Next, applicants are cautioned to enter only the city code and telephone numbers when listing Mexican telephone numbers on the form because previous applicants often submitted invalid or incomplete telephone numbers.

Under the Insurance Instructions, we emphasize that although evidence of coverage is not required at the time the application is submitted, a carrier has up 90 days after filing an OP–1(MX) application to submit proof of financial responsibility.

The information on how to receive additional assistance in completing the Forms OP–1(MX) and MCS–150 was revised to list a toll-free telephone number accessible from Mexico. We also updated the information for obtaining assistance with hazardous materials registration procedures and regulations.

The instructions also state that applicants that use a process agent service to designate multiple agents for service of process must attach a letter to the application informing the FMCSA of this option. The applicant must also ensure that the service electronically files the Form BOC–3 with the FMCSA within 90 days after submitting the application. The applicant is also notified that it may not begin operations in the United States until the Form BOC–3 has been filed with FMCSA.

The FMCSA has modified Section IA to add a question asking applicants whether they previously held provisional operating authority that was revoked. If that is the case, the applicant must show how it has corrected the deficiencies that resulted in the revocation, explain what effectively functioning basic safety management systems it now has in place, and provide any information and documents that support its arguments.

The FMCSA has corrected references in Section IA, and in the corresponding instructions, to an ''SCT registration number.'' An applicant must be registered with SCT to be issued operating authority. However, the SCT does not issue an SCT registration number. It uses the RFC number, a Mexican Federal Taxpayer Registration identifier issued by a separate

Government agency, to track the carrier's information in the SCT database. A company is issued a Registro Federal de Contribuyente; individuals are issued a Registro Federal de Causante. The applicant must complete Question 5a under Section IA based upon the applicant's form of business: (1) if the applicant is a sole proprietorship, enter the Registro Federal de Causante; (2) all other business forms should complete Question 5a using the Registro Federal de Contribuyente.

We have deleted a redundant question regarding the applicant's domicile from Section IA and Ownership and Control information from Section II. This information was used to substantiate claims that a carrier was U.S.-owned or controlled and therefore eligible to operate beyond the border zones under a Certificate of Registration. With the implementation of NAFTA's access provisions, Mexico-domiciled carriers applying to operate beyond the border zones will no longer file the OP–2 form. They must file an OP–1(MX), and ownership and control information will not be the basis for granting authority.

Several safety certifications have been modified or added to Section V. The safety certification for applicants that are exempt from the Federal Motor Carrier Safety Regulations because of the weight of their vehicles and because they will not transport hazardous materials (as was discussed in the proposed form instructions but inadvertently omitted from the proposed form) has been restored. These applicants must certify that they will observe safe operating practices and comply with applicable State, local and tribal safety laws.

Under Driver Qualifications, applicants must certify, consistent with 49 CFR 391.23, that they will investigate their drivers' 3-year employment and driving histories. The certification statement concerning the need for carriers to establish a system and instructions for drivers to report criminal convictions has been removed. Current regulations only require domestic drivers to report violations of motor vehicle traffic laws and ordinances. The certification statement relating to the use of properly licensed drivers has been modified to require that the driver's Licencia Federal de Conductor be registered in the SCT database.

The four certification statements proposed under certification section V.8, pertaining to requirements that must be in place once operations within the United States have begun, have been modified to emphasize that they are post-operational requirements and have been integrated into the Hours of Service, Driver Qualifications, and Vehicle Condition certification sections, as appropriate.

In response to comments from the ATA, Teamsters, OOIDA, and the TTD, we have extensively revised the Hazardous Materials (HM) and Cargo Tank certification statements. The HM training certification was modified to cite the relevant HM training regulations (49 CFR part 172, subpart H and 49 CFR 177.816) and the specific hazardous materials safety compliance information that must accompany the application.

We reworded the certification statement regarding the establishment of a system and procedures for inspecting, repairing and maintaining ''vehicles for HM transportation in a safe condition.'' The Hazardous Materials Regulations (HMR) require a system and procedures for inspection, repair and maintenance of reusable hazardous materials packages in a safe condition. The vehicle inspection, repair and maintenance requirement is covered in the Vehicle Condition certification statements.

We added a new certification statement requiring carriers to ensure that all HM vehicles are marked and placarded in compliance with 49 CFR part 172, subparts D and F.

The HM registration certification statement, which is not restricted to Cargo Tank carriers, has been corrected and moved to the Hazardous Materials section.

The Section VIII—Compliance Certification statement concerning process agent(s) has been modified to replace the phrase ''judicial filings and notices'' with ''filings and notices.'' Two new Compliance Certification statements have been added. In the first, responsive to section 350(a)(5) of the DOT Appropriations Act, the applicant must certify it is willing and able to have all vehicles operated in the United States inspected at least every 90 days by a certified CVSA inspector and have decals affixed attesting to satisfactory compliance with Level I CVSA Inspection criteria. This provision will require a Mexico-domiciled motor carrier to seek out a qualified CVSA inspector to conduct a CVSA inspection at least every 90 days until it has operated under permanent authority for at least 3 consecutive years. Mexico-domiciled carriers should seek out and have Mexico-domiciled CVSA inspectors perform such inspections in Mexico before the carrier sends its vehicles to United States ports of entry. This will help the carriers to minimize disruptions to the efficient use of their vehicles, minimize time in the U.S. ports of entry, and provide a more efficient border crossing enroute to its U.S. and Canadian destinations.

The second compliance certification added to Section VIII is designed to ensure that Mexico-domiciled carriers whose registration has been suspended or revoked are not reapplying for operating authority while under suspension or sooner than 30 days after the date of revocation, as prohibited in part 385 subpart B. A signature line also has been placed beneath the Compliance Certification statements, consistent with Section V—Safety Certifications and Section VI—Household Goods Arbitration Certifications.

Certain other changes were made to the Section VIII—Compliance Certifications after discussions with the U.S. Department of Labor and the U.S. Environmental Protection Agency. The proposed Form OP–1(MX) included a certification that the applicant is willing and able to comply with U.S. labor laws. Although the certification is included in a section that is prefaced by the direction ''All applicants must certify as follows:'', the instructions for the form, after first stating that FMCSA considered compliance with labor laws to be ''extremely important,'' then indicated that ''registration will not be withheld based solely on the failure by an applicant to certify that it is willing and able to comply with such [DOL and OSHA] requirements * * *.'' The FMCSA has removed those certification statements and the accompanying instructions. We have added new language that compliance with all pertinent Federal, State, local and tribal statutory and regulatory requirements, including labor and environmental laws, is mandatory. Such compliance includes producing requested records for review and inspection, and that inspectors of the Immigration and Naturalization Service at the port of entry must determine the driver of the vehicle meets the requirements under the Immigration and Nationality Act. The statements do not require certification—they are informational in nature—and thus have been placed after the signature line.

The Filing Fee Policy and Computation Box that formerly appeared in the form instructions have been moved to the back of the form because a carrier cannot provide filing fee information until completing Section III—Types of Registration. The fee policy also discloses that the FMCSA will place a 30-day hold on the application if the filing fee payment is made by personal check.

Finally, FMCSA will translate the form and instructions into Spanish to help applicants understand what each question asks and what types of answers they need to provide.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and Department of Transportation Regulatory Policies and Procedures

The FMCSA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866, and is significant within the meaning of Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979) because of public interest. It has been reviewed by the Office of Management and Budget under Executive Order 12866. However, it is anticipated that the economic impact of the revisions in this rulemaking will be minimal. The new or revised Form OP–1(MX) is intended to foster and contribute to safety of operations, adherence to U.S. law and regulations, and compliance with U.S. insurance and tax payment requirements on the part of Mexico-domiciled carriers.

Nevertheless, the subject of safe operations by Mexico-domiciled carriers in the United States has generated considerable public interest within the meaning of Executive Order 12866. The manner in which the FMCSA carries out its safety oversight responsibilities with respect to this international motor carrier transportation has been of substantial interest to the domestic motor carrier industry, the Congress, and the public at large. The 2002 DOT Appropriations Act includes specific requirements FMCSA must complete to begin reviewing and processing the application Form OP–1(MX) under this interim final rule.

The Regulatory Evaluation analyzes the costs and benefits of this rule and the two companion NAFTA-related rules published elsewhere in today's **Federal Register**. Pursuant to Executive Order 12866, because these rules are so closely interrelated, we did not attempt to prepare separate analyses for each rule.

The evaluation estimated costs and benefits based on three different scenarios, with a high, low and medium number of Mexico-domiciled carriers assumed covered by the rules. The costs of these rules are minimal under all three scenarios. Over 10 years, the costs range from $53 million for the low scenario to approximately $76 million for the high scenario. Forty percent of these costs are borne by the FMCSA, while the remaining costs are paid by Mexico-domiciled carriers. The largest costs are those associated with conducting pre-authorization safety audits, compliance reviews within 18-months of a carrier's receiving provisional operating authority, and the loss of a carrier's ability to operate in the United States.

The FMCSA used the cost effectiveness approach to determine the benefits of these rules. This approach involves estimating the number of crashes that would have to be deterred in order for the proposals to be cost effective. Over 10 years, the low scenario would have to deter 640 forecast crashes to be cost beneficial, the medium scenario would have to deter 838, and the high scenario would have to deter 929. While the overall number of crashes to be avoided under the medium and high scenario is fairly high, the number falls rapidly over the 10-year analysis period and beyond. The tenth year deterrence rate is one-quarter to one-sixth the size of the first year's rate.

A copy of the Regulatory Evaluation is in the docket for this rulemaking.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (Pub. L. 96–354, 5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement and Fairness Act (Pub. L. 104–121), requires Federal agencies to analyze the impact of rulemakings on small entities, unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The United States did not have in place a special system to ensure the safety of Mexico-domiciled carriers operating in the United States. Mexico-domiciled carriers will be subject to all the same safety regulations as domestic carriers. However, FMCSA's enforcement of the FMCSRs has become increasingly data dependent in the last several years. Several programs have been put in place to continually analyze crash rates, out-of-service rates, compliance review records, and other data sources to allow the agency to focus on high-risk carriers. This strategy is only effective if the FMCSA has adequate data on carriers' size, operations, and history. Thus, a key component of this rule and the companion application rule for border-zone carriers is the requirement that Mexico-domiciled carriers operating in the United States must complete a Form MCS–150-Motor Carrier Identification Report, and must update their Form OP–1(MX)-Application to Register Mexican Carriers for Motor Carrier Authority To Operate Beyond U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border or Form OP–2-Application for Mexican Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers Under 49 U.S.C. 13902 when their situation changes. This will allow the FMCSA to better monitor these carriers and to quickly determine whether their safety or out-of-service record changes.

The more stringent oversight procedures established in our safety monitoring interim final rule, RIN 2126–AA35, will also allow the FMCSA to respond more quickly when safety problems emerge. Required safety audits, compliance reviews and CVSA inspections will provide the FMCSA with more detailed information about Mexico-domiciled carriers, and allow the FMCSA to act appropriately upon discovering safety problems.

The objective of these rules is to help ensure the safe operation of Mexico-domiciled carriers in the United States. The rules describe what additional information Mexico-domiciled carriers will have to submit, and outline the procedure for dealing with possible safety problems.

The safety monitoring system, the safety certifications and other information to be submitted in the OP–1(MX) and OP–2 applications, and the pre-authorization safety audit are means of ensuring that: (1) Mexico-domiciled applicants are sufficiently knowledgeable about safety requirements before commencing operations (a prerequisite to being able to comply); and (2) their actual operations in the United States are conducted in accordance with their application certifications and the conditions of their registrations.

These rules will primarily affect Mexico-domiciled small motor carriers who wish to operate in the United States. The amount of information these carriers will have to supply to the FMCSA has been increased, and we estimate that they will spend two additional hours gathering data for the OP–1(MX) and OP–2 application forms. Mexico-domiciled carriers subject to this rule will also have to undergo pre-authorization safety audits and demonstrate continuous compliance with motor vehicle safety standards by undergoing compliance reviews and displaying valid CVSA inspection decals on their vehicles. We presented three growth scenarios in the regulatory evaluation: A high option, with 11,787 Mexico-domiciled carriers in the baseline; a medium scenario, with 9,500 Mexico-domiciled carriers in the

baseline; and a low scenario, with 4,500 Mexico-domiciled carriers in the baseline. Under all three options, the FMCSA believes that the number of applicants will match approximately that observed in the last few years before this publication date, approximately 1,365 applicants per year.

A review of the Motor Carrier Management Information System census file reveals that the vast majority of Mexico-domiciled carriers are small, with 75 percent having three or fewer vehicles. Carriers at the 95th percentile had only 15 trucks or buses.

These rules should not have any impact on small U.S.-based motor carriers.

The Regulatory Evaluation includes a description of the recordkeeping and reporting requirements of these rules. Applicants filing both the OP–1(MX) and OP–2 will also have to submit the Form MCS–150 and the Form BOC–3–Designation of Agent for Service of Process. In addition, Mexico-domiciled carriers will have to notify the FMCSA of any changes to certain information.

The MCS–150 is approximately two pages long. In addition to requiring basic identifying information, it requires that carriers state the type of operation they run, the number of vehicles and drivers they use, and the types of cargo they haul. The BOC–3 form merely requires the name, address and other information for a domestic agent to receive legal notices on behalf of the motor carrier. The rules also include other modest changes in the OP–1(MX) and OP–2 forms.

None of these forms require any special expertise to complete. Any individual with knowledge about the operations of a carrier should be able to fill out these forms.

The FMCSA is not aware of any other rules that duplicate, overlap with, or conflict with these rules.

The FMCSA did not establish any different requirements or timetables for small entities. As noted above, we do not believe these requirements are onerous. Most covered carriers will be required to spend two extra hours to complete the relevant forms, undergo a safety audit and a compliance review or one safety audit (depending on the type of authority they apply for) at four to six hours each and display a valid CVSA inspection decal. The part 385 rule would not achieve its purposes if small entities were exempt. In order to ensure the safety of Mexico-domiciled carriers, the rule must have a consistent procedure for addressing safety problems. Exempting small motor carriers (which, as was noted above, are the vast majority or Mexico-domiciled carriers who would operate in the United States) would defeat the purpose of these rules.

The FMCSA did not consolidate or simplify the compliance and reporting requirements for small carriers. Small U.S.-based carriers already have to comply with the paperwork requirements in part 365. There is no evidence that domestic carriers find these provisions confusing or particularly burdensome. Apropos the part 385 provisions, we believe the requirements are fairly straightforward, and it would not be possible to simplify them. A simplification of any substance would make the rule ineffectual. Given the compelling interest in guaranteeing the safety of Mexico-domiciled carriers operating in the United States, and the fact that the majority of these carriers are small entities, no special changes were made.

Therefore, the FMCSA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13211 (Energy Supply, Distribution, or Use)

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. This action is not a significant energy action within the meaning of section 4(b) of the Executive Order because as a procedural action it is not economically significant and will not have a significant adverse effect on the supply, distribution, or use of energy.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; 2 U.S.C. 1532) requires each agency to assess the effects of its regulatory actions on State, local, and tribal governments and the private sector. Any agency promulgating a final rule likely to result in a Federal mandate requiring expenditures by a State, local, or tribal government or by the private sector of $100 million or more in any one year must prepare a written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. The FMCSA has determined that the changes effected by this rulemaking would not have an impact of $100 million or more in any one year. The Federal Government reimburses inspectors, funds facilities, and provides support through the MCSAP grant program.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity and reduce burden.

Executive Order 13045 (Protection of Children)

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (April 23, 1997, 62 FR 19885), requires that agencies issuing ''economically significant'' rules that also concern an environmental health or safety risk that an agency has reason to believe may disproportionately affect children must include an evaluation of the environmental health and safety effects of the regulation on children. Section 5 of Executive Order 13045 directs an agency to submit for a ''covered regulatory action'' an evaluation of its environmental health or safety effects on children.

The agency has determined that this rule is not a ''covered regulatory action'' as defined under Executive Order 13045. First, this rule is not economically significant under Executive Order 12866 because the FMCSA has determined that the changes in this rulemaking would not have an impact of $100 million or more in any one year. The costs range from $53 to $76 million over 10 years. Second, the agency has no reason to believe that the rule would result in an environmental health risk or safety risk that would disproportionately affect children. Mexico-domiciled motor carriers who intend to operate commercial motor vehicles anywhere in the United States must comply with current U.S. Environmental Protection Agency regulations and other United States environmental laws under this rule and others being published elsewhere in today's **Federal Register**. Further, the agency has conducted a programmatic environmental assessment as discussed later in this preamble. While the PEA did not specifically address environmental impacts on children, it did address whether the rule would have environmental impacts in general. Based on the PEA, the agency has determined that the proposed rule would have no significant environmental impacts.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have

taking implications under E. O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999 (64 FR 43255, August 10, 1999). The FMCSA has determined that this action would not have significant Federalism implications or limit the policymaking discretion of the States.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217 Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Executive Order 13166 (Limited English Proficiency)

Executive Order 13166, Improving Access to Services for Persons With Limited English Proficiency, requires each Federal agency to examine the services it provides and develop reasonable measures to ensure that persons seeking government services but limited in their English proficiency can meaningfully access these services consistent with, and without unduly burdening, the fundamental mission of the agency. The FMCSA plans to provide a Spanish translation of the form OP–1(MX) application and instructions. We believe that this action complies with the principles enunciated in the Executive Order.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FMCSA has determined that this proposal would impact a currently approved information collection, OMB No. 2126–0016.

The information collection requirements of Form OP–1(MX) have been approved by the OMB under the control number 2126–0016, titled ''Revision of Licensing Application Forms, Application Procedures, and Corresponding Regulations.'' This approval includes forms OP–1(MX), OP–1(P), OP–1(FF), and OP–1 and totals 40,060 burden hours. Of that amount, 2,060 annual burden hours was estimated as the OP–1(MX) baseline (1,030 respondents per year @ 2 hours each to complete the form).

Carriers anticipating that the moratorium on new grants of operating authority to Mexico-domiciled carriers would be lifted filed 190 applications, but soon ceased to file applications when it became evident that the forms were not being processed due to a delay in implementing the NAFTA agreement. For this reason, OP–1(MX) filings fell well below the 1,000 respondent estimate.

Revisions to OP–1(MX) Baseline: A PRA review normally involves determining the information collection impacts of a rulemaking, comparing those impacts with the current regulation (baseline) and measuring the resulting change. The FMCSA finds it necessary to amend the baseline (1) to be consistent with updated demographic data on Mexico-domiciled carriers from the PEA and Regulatory Flexibility Analysis to this rule, and (2) to take into account an imminent Presidential action that is not subject to PRA review-the issuance of a Presidential Order lifting the moratorium on grants of operating authority to Mexico-domiciled motor carriers to operate within the United States beyond the border zones. The Regulatory Evaluation to this rule projects a high, medium and low estimate for the number of Mexico-domiciled carriers now operating within the United States. The PRA review is based on the medium estimate of 9,500 active carriers. Therefore, the revised baseline assumes that the moratorium is lifted and that Mexico-domiciled carriers are filing the existing OP–1(MX) application form. The agency is revising the form title to ''Application to Register Mexican Carriers for Motor Carrier Authority To Operate Beyond U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border.''

The FMCSA estimates that 5,108 Mexico-domiciled carriers will request OP–1(MX) operating authority in year one (includes half of the 9,500 active Mexico-domiciled carriers (4,750) plus 25 percent of 1,430 new applicants (358)), and 358 Mexico-domiciled carriers will apply in subsequent years. The existing form takes approximately 2 hours to complete. Since Mexico-domiciled carriers currently are not required to update carrier identification information, there would be zero updates received in year one and subsequent years. The revised baseline is calculated as follows:

OP–1(MX) filings (year one): 10,216 hours [5,108 × 2 hours per form]

OP–1(MX) filings (subsequent years): 716 hours [358 × 2 hours per form]

The revised baseline results in the following annual burden hour estimate for control no. 2126–0016:

Year One: 48,216 hours [38,000 + 10,216]

Subsequent Years: 38,358 [38,000 + 358]

Impact of the interim final rule. This action proposes to amend 49 CFR part 365 and revise Form OP–1(MX). Under the amended regulations, Mexico-domiciled motor carriers seeking to operate within the United States beyond the border zones, including carriers that previously filed pending Form OP–1(MX) applications, would be required to submit the revised Form OP–1(MX). Under the revised Form OP–1(MX), the FMCSA will collect more detailed information on an applicant motor carrier's size, operations, and history than can be collected using the current form. In addition, all grants of operating authority issued under the revised form would be conditioned upon the carrier's successful completion of a pre-operational safety audit and an 18-month safety monitoring program (established in an interim final rule published elsewhere in today's **Federal Register**), including a compliance review. For these reasons, the FMCSA anticipates that the number of carriers would be lower than the revised baseline. The FMCSA estimates that 5,091 Mexico-domiciled carriers would apply for OP–1(MX) authority in year one, and 341 carriers thereafter. Due to the additional information requested on the form, the FMCSA estimates that it will take 4 hours to complete.

The FMCSA must be notified in writing of certain key changes in the information on the form within 45 days of the change. For changes and updates, the agency anticipates that annually approximately one quarter of those granted authority will update their applications. It will take approximately 30 minutes to complete the updates. For simplicity's sake, we based the number of individuals granted authority on the estimated total number of first-year applicants.

OP–1(MX) Updates/Changes:

(In year one): 1,273 = (5,091 × .25 = 1272.75 rounded)

(In subsequent years): 1,358 (5,091 + 341 = 5,432 × .25)

Therefore, the FMCSA estimates that the interim final rule will adjust the annual burden hour estimate for the OP–1(MX) as follows:

Mexico-domiciled carrier filings of the Form OP–1(MX):

(In first year): 20,364 hours [5,091 × 4 hours per form]

(In subsequent years): 1,364 hours [341 × 4 hours per form]

Updates/Changes:

(In first year): 1,273 × .50 hour per form = 637 hours (rounded)

(In subsequent years): 1,358 × .50 hour per form = 679 hours

The total burden hours for this information collection in the first year is 59,001 hours [(38,000 hours + 20,364 hours + 637 hours)] and in subsequent years is 40,043 hours [38,000 hours + 1,364 hours + 679 hours].

OMB Control Number: 2126–0016

Title: Revision of Licensing Application Forms, Application Procedures, and Corresponding Regulations.

Respondents: Mexico-domiciled motor carriers.

Estimated Annual Hour Burden for this Interim Final Rule: Year 1 = 59,001 hours; Subsequent years = 40,043 hours.

You may submit any additional comments on the information collection burden addressed by this interim final rule to the Office of Management and Budget (OMB). The OMB must receive your comments by April 18, 2002. You must mail or hand deliver your comments to: Attention: Desk Officer for the Department of Transportation, Docket Library, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, 725 17th Street, NW., Washington, DC 20503.

National Environmental Policy Act

The FMCSA is a new administration within the Department of Transportation (DOT). The FMCSA is currently developing an agency order that will comply with all statutory and regulatory policies under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). We expect the draft FMCSA Order to appear in the **Federal Register** for public comment in the near future. The framework of the FMCSA Order is consistent with and reflects the procedures for considering environmental impacts under DOT Order 5610.1C. FMCSA has analyzed this rule under the NEPA and DOT Order 5610.1C, and has issued a Finding Of No Significant Impact (FONSI). The FONSI and the environmental assessment are in the docket to this rule.

List of Subjects in 49 CFR Part 365

Administrative practice and procedure, Brokers, Buses, Freight forwarders, Motor carriers, Moving of household goods, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the FMCSA amends 49 CFR part 365 as follows:

PART 365—RULES GOVERNING APPLICATIONS FOR OPERATING AUTHORITY

1. The authority citation for part 365 is revised to read as follows:

Authority: 5 U.S.C. 553 and 559; 16 U.S.C. 1456; 49 U.S.C. 13101, 13301, 13901–13906, 14708, 31138, and 31144; 49 CFR 1.73.

2. In § 365.101, revise paragraph (h) to read as follows:

§ 365.101 Applications governed by these rules.

* * * * *

(h) Applications for Mexico-domiciled motor carriers to operate in foreign commerce as common, contract or private motor carriers of property (including exempt items) between Mexico and all points in the United States. Under NAFTA Annex I, page I–U–20, a Mexico-domiciled motor carrier may not provide point-to-point transportation services, including express delivery services, within the United States for goods other than international cargo.

3. In § 365.105, revise paragraph (a) to read as follows:

§ 365.105 Starting the application process: Form OP–1.

(a) All applicants must file the appropriate form in the OP–1 series, effective January 1, 1995. Form OP–1 for motor property carriers and brokers of general freight and household goods; Form OP–1(P) for motor passenger carriers; Form OP–1(FF) for freight forwarders of household goods; and Form OP–1(MX) for Mexico-domiciled motor property carriers, including household goods and motor passenger carriers. A separate filing fee in the amount set forth at 49 CFR 360.3(f)(1) is required for each type of authority sought in each transportation mode.

* * * * *

4. Add a new subpart E to part 365 to read as follows:

Subpart E—Special Rules for Certain Mexico-Domiciled Carriers

Sec.

Subpart E—Special Rules for Certain Mexico-domiciled Carriers

§ 365.501 Scope of rules.

(a) The rules in this subpart govern the application by a Mexico-domiciled motor carrier to provide transportation of property or passengers in interstate commerce between Mexico and points in the United States beyond the municipalities and commercial zones along the United States-Mexico international border.

(b) A Mexico-domiciled carrier may not provide point-to-point transportation services, including express delivery services, within the United States for goods other than international cargo.

§ 365.503 Application.

(a) Each applicant applying under this subpart must submit an application that consists of:

(1) Form OP–1 (MX)—Application to Register Mexican Carriers for Motor Carrier Authority To Operate Beyond U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border;

(2) Form MCS–150—Motor Carrier Identification Report; and

(3) A notification of the means used to designate process agents, either by submission in the application package of Form BOC–3—Designation of Agents-Motor Carriers, Brokers and Freight Forwarders or a letter stating that the applicant will use a process agent service that will submit the Form BOC–3 electronically.

(b) The Federal Motor Carrier Safety Administration (FMCSA) will only process your application if it meets the following conditions:

(1) The application must be completed in English;

(2) The information supplied must be accurate, complete, and include all required supporting documents and applicable certifications in accordance with the instructions to Form OP–1 (MX), Form MCS–150, and Form BOC–3;

(3) The application must include the filing fee payable to the FMCSA in the amount set forth at 49 CFR 360.3(f)(1); and

(4) The application must be signed by the applicant.

(c) You must submit the application to the address provided in Form OP–1(MX).

(d) You may obtain the application forms from any FMCSA Division Office or download it from the FMCSA website at: *http://www.fmcsa.dot.gov/factsfigs/formspubs.htm.*

§ 365.505 Re-registration and fee waiver for certain applicants.

(a) If you filed an application using Form OP–1(MX) before May 3, 2002, you are required to file a new Form OP–1(MX). You do not need to submit a new fee when you file a new application under this subpart.

(b) If you hold a Certificate of Registration issued before April 18, 2002, authorizing operations beyond the municipalities along the United States-Mexico border and beyond the commercial zones of such municipalities, you are required to file an OP–1(MX) if you want to continue those operations. You do not need to submit a fee when you file an application under this subpart.

(1) You must file the application by November 4, 2003.

(2) The FMCSA may suspend or revoke the Certificate of Registration of any applicable holder that fails to comply with the procedures set forth in this section.

(3) Certificates of Registration issued before April 18, 2002, will remain valid unbvtil the FMCSA acts on the OP–1(MX) application.

§ 365.507 FMCSA action on the application.

(a) The FMCSA will review and act on each application submitted under this subpart in accordance with the procedures set out in this part.

(b) The FMCSA will validate the accuracy of information and certifications provided in the application by checking data maintained in databases of the governments of Mexico and the United States.

(c) *Pre-authorization safety audit.* Every Mexico-domiciled carrier that applies under this part must satisfactorily complete an FMCSA-administered safety audit before FMCSA will grant provisional operating authority to operate in the United States. The safety audit is a review by the FMCSA of the carrier's written procedures and records to validate the accuracy of information and certifications provided in the application and determine whether the carrier has established or exercises the basic safety management controls necessary to ensure safe operations. The FMCSA will evaluate the results of the safety audit using the criteria in Appendix A to this subpart.

(d) If a carrier successfully completes the pre-authorization safety audit and the FMCSA approves its application submitted under this subpart, FMCSA will publish a summary of the application as a preliminary grant of authority in the FMCSA Register to give notice to the public in case anyone wishes to oppose the application, as required in § 365.109(b) of this part.

(e) If the FMCSA grants provisional operating authority to the applicant, it will assign a distinctive USDOT Number that identifies the motor carrier as authorized to operate beyond the municipalities in the United States on the U.S.-Mexico international border and beyond the commercial zones of such municipalities. In order to operate in the United States, a Mexico-domiciled motor carrier with provisional operating authority must:

(1) Have its surety or insurance provider file proof of financial responsibility in the form of certificates of insurance, surety bonds, and endorsements, as required by § 387.301 of this subchapter;

(2) File a hard copy of, or have its process agent(s) electronically submit, Form BOC–3—Designation of Agents-Motor Carriers, Brokers and Freight Forwarders, as required by part 366 of this subchapter; and

(3) Comply with all provisions of the safety monitoring system in subpart B of part 385 of this subchapter, including successfully passing CVSA Level I inspections at least every 90 days and having decals affixed to each commercial motor vehicle operated in the United States as required by § 385.103(c) of this subchapter.

(f) The FMCSA may grant permanent operating authority to a Mexico-domiciled carrier no earlier than 18 months after the date that provisional operating authority is granted and only after successful completion to the satisfaction of the FMCSA of the safety monitoring system for Mexico-domiciled carriers set out in subpart B of part 385 of this subchapter. Successful completion includes obtaining a satisfactory safety rating as the result of a compliance review.

§ 365.509 Requirement to notify FMCSA of change in applicant information.

(a) A motor carrier subject to this subpart must notify the FMCSA of any changes or corrections to the information in parts I, IA or II submitted on the Form OP–1(MX) or the Form BOC–3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders during the application process or after having been granted provisional operating authority. The carrier must notify the FMCSA in writing within 45 days of the change or correction.

(b) If a carrier fails to comply with paragraph (a) of this section, the FMCSA may suspend or revoke its operating authority until it meets those requirements.

§ 365.511 Requirement for CVSA inspection of vehicles during first three consecutive years of permanent operating authority.

A Mexico-domiciled motor carrier granted permanent operating authority must have its vehicles inspected by Commercial Vehicle Safety Alliance (CVSA)-certified inspectors every three months and display a current inspection decal attesting to the successful completion of such an inspection for at least three consecutive years after receiving permanent operating authority from the FMCSA.

Appendix A to Subpart E of Part 365—Explanation of Pre-Authorization Safety Audit Evaluation Criteria for Mexico-Domiciled Motor Carriers

I. General

(a) Section 350 of the Fiscal Year 2002 DOT Appropriations Act (Pub. L. 107–87) directed the FMCSA to perform a safety audit of each Mexico-domiciled motor carrier before the FMCSA grants the carrier provisional operating authority to operate beyond United States municipalities and commercial zones on the United States-Mexico international border.

(b) The FMCSA will decide whether it will conduct the safety audit at the Mexico-domiciled motor carrier's principal place of business in Mexico or at a location specified by the FMCSA in the United States, in accordance with the statutory requirements that 50 percent of all safety audits must be conducted onsite and on-site inspections cover at least 50 percent of estimated truck traffic in any year. All records and documents must be made available for examination within 48 hours after a request is made. Saturdays, Sundays, and Federal holidays are excluded from the computation of the 48-hour period.

(c) The safety audit will include:

(1) Verification of available performance data and safety management programs;

(2) Verification of a controlled substances and alcohol testing program consistent with part 40 of this title;

(3) Verification of the carrier's system of compliance with hours-of-service rules in part 395 of this subchapter, including recordkeeping and retention;

(4) Verification of proof of financial responsibility;

(5) Review of available data concerning the carrier's safety history, and other information necessary to determine the carrier's preparedness to comply with the Federal Motor Carrier Safety Regulations, parts 382 through 399 of this subchapter, and the Federal Hazardous Material Regulations, parts 171 through 180 of this title;

(6) Inspection of available commercial motor vehicles to be used under provisional operating authority, if any of these vehicles have not received a decal required by § 385.103(d) of this subchapter;

(7) Evaluation of the carrier's safety inspection, maintenance, and repair facilities or management systems, including verification of records of periodic vehicle inspections;

(8) Verification of drivers' qualifications, including confirmation of the validity of the Licencia de Federal de Conductor of each driver the carrier intends to assign to operate under its provisional operating authority; and

(9) An interview of carrier officials to review safety management controls and evaluate any written safety oversight policies and practices.

(d) To successfully complete the safety audit, a Mexico-domiciled motor carrier must demonstrate to the FMCSA that it has the required elements in paragraphs (c)(2), (3), (4), (7), and (8) above and other basic safety management controls in place which function adequately to ensure minimum acceptable compliance with the applicable safety requirements. The FMCSA developed a ''safety audit evaluation criteria,'' which uses data from the safety audit and roadside inspections to determine that each applicant for provisional operating authority has basic safety management controls in place.

(e) The safety audit evaluation process developed by the FMCSA is used to:

(1) Evaluate basic safety management controls and determine if each Mexico-domiciled carrier and each driver is able to operate safely in the United States beyond municipalities and commercial zones on the United States-Mexico international border; and

(2) Identify motor carriers and drivers who are having safety problems and need improvement in their compliance with the FMCSRs and the HMRs, before FMCSA grants the carriers provisional operating authority to operate beyond United States municipalities and commercial zones on the United States-Mexico international border.

II. Source of the Data for the Safety Audit Evaluation Criteria

(a) The FMCSA's evaluation criteria are built upon the operational tool known as the safety audit. The FMCSA developed this tool to assist auditors and investigators in assessing the adequacy of a Mexico-domiciled carrier's basic safety management controls.

(b) The safety audit is a review of a Mexico-domiciled motor carrier's operation and is used to:

(1) Determine if a carrier has the basic safety management controls required by 49 U.S.C. 31144;

(2) Meet the requirements of Section 350 of the DOT Appropriations Act; and

(3) In the event that a carrier is found not to be in compliance with applicable FMCSRs and HMRs, the safety audit can be used to educate the carrier on how to comply with U.S. safety rules.

(c) Documents such as those contained in driver qualification files, records of duty status, vehicle maintenance records, and other records are reviewed for compliance with the FMCSRs and HMRs. Violations are cited on the safety audit. Performance-based information, when available, is utilized to evaluate the carrier's compliance with the vehicle regulations. Recordable accident information is also collected.

III. Overall Determination of the Carrier's Basic Safety Management Controls

(a) The carrier will not be granted provisional operating authority if the FMCSA fails to:

(1) Verify a controlled substances and alcohol testing program consistent with part 40 of this title;

(2) Verify a system of compliance with hours-of-service rules of this subchapter, including recordkeeping and retention;

(3) Verify proof of financial responsibility;

(4) Verify records of periodic vehicle inspections; and

(5) Verify drivers' qualifications of each driver the carrier intends to assign to operate under such authority, as required by parts 383 and 391 of this subchapter, including confirming the validity of each driver's Licencia de Federal de Conductor.

(b) If the FMCSA confirms each item under II (a)(1) through (5) above, the carrier will be granted provisional operating authority, except if FMCSA finds the carrier has inadequate basic safety management controls in at least three separate factors described in part III below. If FMCSA makes such a determination, the carrier's application for provisional operating authority will be denied.

IV. Evaluation of Regulatory Compliance

(a) During the safety audit, the FMCSA gathers information by reviewing a motor carrier's compliance with ''acute'' and ''critical'' regulations of the FMCSRs and HMRs.

(b) Acute regulations are those where noncompliance is so severe as to require immediate corrective actions by a motor carrier regardless of the overall basic safety management controls of the motor carrier.

(c) Critical regulations are those where noncompliance relates to management and/or operational controls. These are indicative of breakdowns in a carrier's management controls.

(d) The list of the acute and critical regulations, which are used in determining if a carrier has basic safety management controls in place, is included in Appendix B, VII. List of Acute and Critical Regulations to part 385 of this subchapter.

(e) Noncompliance with acute and critical regulations are indicators of inadequate safety management controls and usually higher than average accident rates.

(f) Parts of the FMCSRs and the HMRs having similar characteristics are combined together into six regulatory areas called ''factors.'' The regulatory factors, evaluated on the adequacy of the carrier's safety management controls, are:

(1) Factor 1—General: Parts 387 and 390;

(2) Factor 2—Driver: Parts 382, 383 and 391;

(3) Factor 3—Operational: Parts 392 and 395;

(4) Factor 4—Vehicle: Part 393, 396 and inspection data for the last 12 months;

(5) Factor 5—Hazardous Materials: Parts 171, 177, 180 and 397; and

(6) Factor 6—Accident: Recordable Accident Rate per Million Miles.

(g) For each instance of noncompliance with an acute regulation, 1.5 points will be assessed.

(h) For each instance of noncompliance with a critical regulation, 1 point will be assessed.

(i) *Vehicle Factor.* (1) When at least three vehicle inspections are recorded in the Motor Carrier Management Information System (MCMIS) during the twelve months before the safety audit or performed at the time of the review, the Vehicle Factor (part 396) will be evaluated on the basis of the Out-of-Service (OOS) rates and noncompliance with acute and critical regulations. The results of the review of the OOS rate will affect the Vehicle Factor as follows:

(i) If the motor carrier has had at least three roadside inspections in the twelve months before the safety audit, and the vehicle OOS rate is 34 percent or higher, one point will be assessed against the carrier. That point will be added to any other points assessed for discovered noncompliance with acute and critical regulations of part 396 to determine the carrier's level of safety management control for that factor.

(ii) If the motor carrier's vehicle OOS rate is less than 34 percent, or if there are less than three inspections, the determination of the carrier's level of safety management controls will only be based on discovered noncompliance with the acute and critical regulations of part 396.

(2) Over two million inspections occur on the roadside each year in the United States. This vehicle inspection information is retained in the MCMIS and is integral to evaluating motor carriers' ability to successfully maintain their vehicles, thus preventing them from being placed OOS during roadside inspections. Each safety audit will continue to have the requirements of part 396, Inspection, Repair, and Maintenance, reviewed as indicated by the above explanation.

(j) *Accident Factor.* (1) In addition to the five regulatory factors, a sixth factor is included in the process to address the accident history of the motor carrier. This factor is the recordable accident rate, which the carrier has experienced during the past 12 months. Recordable accident, as defined in 49 CFR 390.5, means an accident involving a commercial motor vehicle operating on a public road in interstate or intrastate commerce which results in a fatality; a bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or one or more motor vehicles incurring disabling damage as a result of the accident requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(2) Experience has shown that urban carriers, those motor carriers operating entirely within a radius of less than 100 air miles (normally urban areas), have a higher exposure to accident situations because of their environment and normally have higher accident rates.

(3) The recordable accident rate will be used in determining the carrier's basic safety management controls in Factor 6, Accident. It will be used only when a carrier incurs two

or more recordable accidents within the 12 months before the safety audit. An urban carrier (a carrier operating entirely within a radius of 100 air miles) with a recordable rate per million miles greater than 1.7 will be deemed to have inadequate basic safety management controls for the accident factor. All other carriers with a recordable accident rate per million miles greater than 1.5 will be deemed to have inadequate basic safety management controls for the accident factor. The rates are the result of roughly doubling the United States national average accident rate in Fiscal Years 1994, 1995, and 1996.

(4) The FMCSA will continue to consider preventability when a new entrant contests the evaluation of the accident factor by presenting compelling evidence that the recordable rate is not a fair means of evaluating its accident factor. Preventability will be determined according to the following standard: ''If a driver, who exercises normal judgment and foresight, could have foreseen the possibility of the accident that in fact occurred, and avoided it by taking steps within his/her control which would not have risked causing another kind of mishap, the accident was preventable.''

(k) *Factor Ratings*

(1) The following table shows the five regulatory factors, parts of the FMCSRs and HMRs associated with each factor, and the accident factor. Each carrier's level of basic safety management controls with each factor is determined as follows:

(i) Factor 1—General: Parts 390 and 387;

(ii) Factor 2—Driver: Parts 382, 383, and 391;

(iii) Factor 3—Operational: Parts 392 and 395;

(iv) Factor 4—Vehicle: Parts 393, 396 and the Out of Service Rate;

(v) Factor 5—Hazardous Materials: Part 171, 177, 180 and 397; and

(vi) Factor 6—Accident: Recordable Accident Rate per Million Miles;

(2) For paragraphs III (k)(1)(i) through (v) (Factors 1 through 5), if the combined violations of acute and or critical regulations for each factor is equal to three or more points, the carrier is determined not to have basic safety management controls for that individual factor.

(3) For paragraphs III (k)(1)(vi), if the recordable accident rate is greater than 1.7 recordable accidents per million miles for an urban carrier (1.5 for all other carriers), the carrier is determined to have inadequate basic safety management controls.

(l) Notwithstanding FMCSA verification of the items listed in part II (a)(1) through (5) above, if the safety audit determines the carrier has inadequate basic safety management controls in at least three separate factors described in part III, the carrier's application for provisional operating authority will be denied. For example, FMCSA evaluates a carrier finding:

(1) One instance of noncompliance with a critical regulation in part 387 scoring one point for Factor 1;

(2) Two instances of noncompliance with acute regulations in part 382 scoring three points for Factor 2;

(3) Three instances of noncompliance with critical regulations in part 396 scoring three points for Factor 4; and

(4) Three instances of noncompliance with acute regulations in parts 171 and 397 scoring four and one-half (4.5) points for Factor 5.

Under this example, the carrier will not receive provisional operating authority because it scored three or more points for Factors 2, 4, and 5 and FMCSA determined the carrier had inadequate basic safety management controls in at least three separate factors.

Issued on: March 7, 2002.

Joseph M. Clapp,

Administrator.

Note: The following form will not appear in the Code of Federal Regulations.

BILLING CODE 4910–EX–P

U.S. Department of Transportation

Form Approved
OMB No. 2126-0016

Federal Motor Carrier Safety Administration

Instructions for Completing Form OP-1(MX) Application to Register Mexican Carriers for Motor Carrier Authority To Operate Beyond U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border

Please read these instructions before completing the application form. Retain the instructions and a copy of the complete application for the applicant's records. These instructions will assist an applicant in preparing an accurate and complete application. Applications that do not contain the required information will be rejected and may result in a loss of the application fee. **The application must be completed in English** and typed or printed in ink. If additional space is needed to provide a response to any item, use a separate sheet of paper. Identify applicant on each supplemental page and refer to the section and item number in the application for each response.

PURPOSE OF THIS APPLICATION FORM:

The Form OP-1(MX) is required to be filed by Mexico-domiciled for-hire motor carriers of passengers or property and motor private carriers who wish to register to transport property or passengers in the United States beyond U.S. municipalities on the United States-Mexico border and the commercial zones of such municipalities.

This form is also required to be utilized by those Mexico-domiciled persons or entities who had previously filed applications for registration and who are required to supplement the information in their original applications by completing and re-filing the revised Form OP-1(MX).

This form should not be used for registration by Mexico-domiciled carriers to perform transportation only in municipalities in the United States on the United States-Mexico international border or within the commercial zones of such municipalities. To apply for such registration, complete and file Form OP-2.

This form should not be filed by U.S.-domiciled enterprises owned or controlled by Mexican nationals. Such enterprises must complete and file Form OP-1 or OP-1(P), for property or passengers, respectively.

Under NAFTA Annex I, page I-U-20, a Mexico-domiciled carrier may not provide point-to-point transportation services, including express delivery services, within the United States for goods other than international cargo.

WHAT TO FILE:

All applicants must submit the following:

1. An original and one copy of a completed revised Form OP-1(MX) Application to Register Mexican Carriers for Motor Carrier Authority To Operate Beyond U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border, with all necessary attachments and statements.

2. A signed and dated Form BOC-3, Designation of Agents for Service of Process, which reflects the applicant's full and correct name, as shown on the Form OP-1(MX), and applicant's address, including the street address, the city, State, country and zip code, must be attached to the application. The BOC-3 form must show street address(es), and not post office box numbers, for the person(s) designated as the agent(s) for service of process and administrative notices in connection with the enforcement of any applicable Federal statutes or regulations. A person must be designated in each State in which the applicant will operate. Please refer to the section "Legal Process Agents" for instructions for filing the Form BOC-3 when using a Process Agent Service. **The applicant may not begin operations unless the Form BOC-3 has been filed with the FMCSA.**

3. A completed and signed Form MCS-150 Motor Carrier Identification Report.

4. A filing fee of $300 for **each** type of registration requested in Section III, payable in U.S. dollars on a U.S. bank to the Federal Motor Carrier Safety Administration, by means of a check, money order, or an approved credit card. Cash is not accepted.

GENERAL INSTRUCTIONS FOR COMPLETING THE APPLICATION FORM:

- All questions on the application form must be answered completely and accurately. If a question or supplemental attachment does not apply to the applicant, it should be answered "not applicable."

- The application must be typewritten or printed in ink. Applications written in pencil will be rejected.

- The application must be completed in English.

- The completed certification statements and oath must be signed by the applicant only. For example:

    - If the company is a sole proprietorship, the owner must sign.
    - If the company is a partnership, one of the partners must sign.
    - If the company is a corporation, an official of the company must sign (President, Vice President, Secretary, Treasurer, etc.).

  The same person must sign the oath and certifications. An applicant's attorney or any other representative is not permitted to sign.

- Use the attachment pages included, as appropriate, to provide any descriptions, explanations, statements or other information that is required to be furnished with the application. If additional space is needed to respond to any question, please use separate sheets of paper. Identify applicant on each supplemental page and refer to the section and item number in the application for each response.

- Include only the city code and telephone number for Mexican telephone phone numbers. **Do not** include the Mexico international access code (011-52).

ADDITIONAL ASSISTANCE

FORM OP-1(MX) OR MCS-150

Call 001 (800) 832-5660 for additional information on obtaining FMCSA registration numbers (USDOT or MX) or to monitor the status of an application.

SAFETY RATINGS

For information concerning a carrier's assigned safety rating, call: 001 (800) 832-5660.

U.S. DOT HAZARDOUS MATERIALS REGULATIONS

To obtain information on whether the commodities an applicant intends to transport are considered as hazardous materials:

Refer to the provisions governing the transportation of hazardous materials found under Parts 100 through 180 of Title 49 of the Code of

Federal Regulations (CFR), particularly the Hazardous Materials Table at 49 CFR § 172.101 or visit the U.S. DOT, Research and Special Programs Administration web site: http://hazmat.dot.gov. The web site also provides information about DOT hazardous materials transportation registration requirements.

SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

SECTION I - APPLICANT INFORMATION

APPLICANT'S LEGAL BUSINESS NAME and DOING BUSINESS AS NAME. The applicant's name should be its full legal business name -- the name on the incorporation certificate, partnership agreement, tax records, etc. If the applicant uses a trade name that differs from its official business name, indicate this under "Doing Business As Name." Example: If the applicant is John Jones, doing business as Quick Way Trucking, enter "John Jones" under LEGAL BUSINESS NAME and "Quick Way Trucking" under DOING BUSINESS AS NAME.

Because the FMCSA uses computers to retain information about licensed carriers, it is important to spell, space, and punctuate any name the same way each time the applicant writes it. Example: John Jones Trucking Co., Inc.; J. Jones Trucking Co., Inc.; and John Jones Trucking are considered three separate companies.

BUSINESS ADDRESS/MAILING ADDRESS. The business address is the physical location of the business. Example: El Camino Real #756, Guadalajara, Jalisco, Mexico. Please include the Mexican "colonia" or "barrio."

If applicant receives mail at an address different from the business location, also provide the mailing address. Example: P. O. Box 3721. **NOTE:** To receive FMCSA notices and to ensure that insurance documents filed on applicant's behalf are accepted, notify in writing the Federal Motor Carrier Safety Administration, Room 8218, 400 7th Street, SW., Washington, DC 20590, if the business or mailing address changes. If applicant also maintains an office in the United States, that information should also be provided.

REPRESENTATIVE. If someone other than the applicant is preparing this form, or otherwise assisting the applicant in completing the application, provide the representative's name, title, position, or relationship to the applicant, address, and telephone and FAX numbers. Applicant's representative will be the person contacted if there are questions

SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

concerning this application. Do not include the "colonia" or "barrio" unless the address is in Mexico.

U.S. DOT NUMBER. Applicants are required to obtain a U.S. DOT Number from the U.S. Department of Transportation (U.S. DOT) before initiating service. Motor carriers that already have been issued a U.S. DOT Number should provide it. Applicants that have not previously obtained a U.S. DOT Number will be issued a U.S. DOT number along with their provisional operating authority.

NOTE: A completed and signed Form MCS-150 Motor Carrier Identification Report must be submitted separately with this application.

FORM OF BUSINESS. A business is a corporation, a sole proprietorship, or a partnership. If the business is a sole proprietorship, provide the name of the individual who is the owner. In this situation, the Owner is the registration applicant. If the business is a partnership, provide the full name of each partner.

SECTION IA – ADDITIONAL APPLICANT INFORMATION

All applicants must answer each question in this section. Applicants cannot obtain Operating Authority unless registered with the Mexican Government's Secretaria de Comunicaciones y Transportes (SCT). Therefore, if the applicant is in the process of obtaining an SCT registration, indicate the date that the applicant applied. When the applicant receives its SCT registration, the applicant must supplement this OP-1(MX) application with that information, including its RFC Number (Registro Federal de Contribuyente if the applicant is a company. Registro Federal de Causante if applicant is an individual), before the FMCSA will issue Operating Authority. If the applicant currently holds a valid Certificate of Registration and is applying to operate beyond the U.S.-Mexico border area as required by 49 CFR 365.505, the SCT Registration information, including the RFC Number, is also required. The FMCSA will not suspend an existing Certificate of Registration while an applicant is applying for SCT registration.

SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

SECTION II - AFFILIATIONS INFORMATION

All applicants must disclose pertinent information concerning any relationships or affiliations which the applicant has had with other entities registered with FMCSA or its predecessor agencies. Applicant must indicate whether these entities have been disqualified from operating commercial motor vehicles anywhere in the United States pursuant to Section 219 of the Motor Carrier Safety Improvement Act of 1999.

SECTION III – TYPE (S) OF REGISTRATION REQUESTED

Check the appropriate box(es) for the type(s) of registration the applicant is requesting. For purposes of this application, a motor private carrier is an entity that is transporting its own goods, including an entity that is not a for-hire carrier but is providing interstate transportation under an agreement or contract with a shipper or other business.

A separate filing fee is required for each type of registration requested.

SECTION IV - INSURANCE INFORMATION

Check the appropriate box(es) that describes the type(s) of business the applicant will be conducting.

If the applicant is applying for motor passenger carrier registration, check the box that describes the seating capacity of its vehicles. If all the vehicles the applicant operates have a seating capacity of 15 passengers or fewer, the applicant must maintain $1,500,000 minimum liability coverage. If any one of the vehicles the applicant operates has a seating capacity of 16 passengers or more, the applicant must maintain $5,000,000 minimum liability coverage.

If the applicant is applying for motor property carrier registration and it operates vehicles with a gross vehicle weight rating of 10,000 pounds or more and hauls only non-hazardous materials, the applicant must maintain $750,000 minimum liability coverage for the protection of the public. Hazardous materials referred to in the FMCSA's insurance regulations in item (c) of the table at 49 CFR 387.303 (b)(2) require $1 million minimum liability coverage; those in item (b) of the table at 49 CFR 387.303 (b)(2) require $5 million minimum liability coverage.

SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

If the applicant operates only vehicles with a gross vehicle weight rating less than 10,000 pounds, the applicant must maintain $300,000 minimum liability coverage. If the applicant operates only such vehicles but will be transporting any quantity of Division 1.1, 1.2 or 1.3 explosives; any quantity of poison gas (Division 2.3, Hazard Zone A, or Division 6.1, Packing Group 1, Hazard Zone A materials); or highway route controlled quantity of radioactive materials, the applicant must maintain $5 million minimum liability coverage.

Minimum levels of cargo insurance must be maintained by all motor common carriers in the amount of $5,000 for loss of or damage to property carried on any one motor vehicle, and $10,000 for loss of or damage to property occurring at any one time and place.

Applicant does not have to submit evidence of insurance with the application. However, applicant will be required to present acceptable evidence of necessary insurance coverage to the FMCSA as part of a pre-authorization safety audit. Appropriate insurance forms must be filed within **90 days** after the date that notice of the application is published in the *DOT/FMCSA Register*: Form BMC-91 or BMC-91X for bodily injury and property damage; Form BMC-34 for cargo liability (common property carriers only).

The FMCSA does not furnish copies of insurance forms. The applicant must contact its insurance company to arrange for the filing of all required insurance forms.

If an application is granted by the FMCSA and an MX number is issued, operating authority is still not effective and operations under that authority may not begin unless an insurance filing has been made with and accepted by the FMCSA as required under 49 CFR 387.301. A current DOT Form MCS-90 and evidence of continuing insurance coverage must also be on each of the applicant's vehicles when it crosses the border. This policy also applies to Mexico-domiciled motor private carriers and exempt carriers registering to operate within the United States beyond the border area.

SECTION V - SAFETY CERTIFICATIONS

Applicants for motor carrier registration must complete the safety certifications. The applicant should check the "YES" response only if the applicant can attest to the truth of the statements. The carrier official's signature at the end of this section applies to the Safety Certifications.

SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

The "Applicant's Oath" at the end of the application form applies to all certifications. False certifications are subject to the penalties described in that oath.

If the applicant is exempt from the U.S. DOT safety fitness regulations because it operates only vehicles with a gross vehicle weight rating under 10,001 pounds, and it will not transport any hazardous materials, the applicant must certify that it is familiar with and will observe general operational safety fitness guidelines and applicable State, local and tribal laws relating to the safe operation of commercial vehicles.

Applicants should complete all applicable Attachment pages and, if necessary to complete the responses, attach additional pages identifying the applicant on each supplemental page and referring to the section and item number in the application for each response. If the applicant is exempt from the U.S. DOT safety fitness regulations, the applicant must complete all relevant attachment pages to demonstrate the applicant's willingness and ability to comply with general operational safety fitness guidelines and applicable State, local and tribal laws.

SECTION VI - HOUSEHOLD GOODS ARBITRATION CERTIFICATIONS

Applicants for household goods registration as defined in 49 U.S.C. 13102(10) must certify their agreement to offer arbitration as a means of settling loss and damage claims as a condition of registration. The signature should be that of the same company official who completes the Applicant's Oath.

SECTION VII - SCOPE OF OPERATING REGISTRATION SOUGHT

Applicant must indicate, by checking one or more boxes, the description(s) of the registration(s) for which application is being made.

SECTION VIII - COMPLIANCE CERTIFICATIONS

All applicants are required to certify accurately to their willingness and ability to comply with statutory and regulatory requirements, to their tax payment status, and to their understanding that their agent for service of process is their official representative in the U.S. to receive filings and notices in connection with enforcement of any Federal statutes and regulations.

Applicants are required to certify their willingness to produce records for the purpose of determining compliance with the applicable safety regulations of the FMCSA.

Form OP-1(MX)
Revised March 2002

SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

Applicants are required to certify that they are not now disqualified from operating a commercial motor vehicle in the U.S. pursuant to the Motor Carrier Safety Improvement Act of 1999.

Applicants are required to certify that they are not now prohibited from filing an application because a previously granted FMCSA registration is currently under suspension or was revoked less than 30 days before the filing of this application.

SECTION IX - APPLICANT'S OATH

The applicant or an authorized representative may prepare applications. In either case, the applicant must sign the oath and all safety certifications. (For information on who may sign, see "General Instructions for Completing the Application Form" in the instructions for this application.)

LEGAL PROCESS AGENTS

All motor carrier applicants must designate a process agent in each State where operations are conducted. For example, if the applicant will operate only in California and Arizona, it must designate an agent in each of those States; if the applicant will operate in only one State, an agent must be designated for that State only. Process agents who will accept filings and notices on behalf of the applicant are designated on FMCSA Form BOC-3. Form BOC-3 must be filed with the application, unless the applicant uses a Process Agent Service. If the applicant opts to use a Process Agent Service, it must submit a letter with the application informing the FMCSA of this decision and have the Process Agent Service electronically file the BOC-3 with FMCSA within 90 days after the applicant submits its application. **Applicants may not begin operations unless the Form BOC-3 has been filed with the FMCSA.**

STATE NOTIFICATION

Before beginning operations, all applicants must contact the appropriate regulatory agencies in every State in and through which the carrier will operate to obtain information regarding various State rules applicable to interstate registrations. It is the applicant's responsibility to comply with registration, fuel tax, and other State regulations and procedures. Please refer to the additional information provided in the application packet for further information.

SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

MAILING INSTRUCTIONS:

To file for registration an applicant must submit an ***original and one copy*** of this application with the appropriate filing fee to FMCSA. **Note:** Retain a copy of the completed application form and any attachments for the applicant's records.

Mailing address for applications:

FOR REGULAR MAIL (CHECK OR MONEY ORDER PAYMENT)
Federal Motor Carrier Safety Administration
P. O. Box 100147
Atlanta, GA 30384-0147

FOR EXPRESS MAIL (CHECK OR MONEY ORDER PAYMENT)
Bank of America, Lockbox 100147
6000 Feldwood Road
3rd Floor East
College Park, GA 30349

FOR CREDIT CARD PAYMENT
FMCSA Trans-border Office
P.O. Box 530870
San Diego, CA 92153-0870

FOR RE-APPLICATION (NO PAYMENT REQUIRED)
FMCSA Trans-border Office
P.O. Box 530870
San Diego, CA 92153-0870

U.S. Department of Transportation

Federal Motor Carrier Safety Administration

Form Approved
OMB No. 2126-0016

FORM OP-1(MX)
Application to Register Mexican Carriers for Motor Carrier Authority To Operate Beyond U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border

This application is for all Mexico-domiciled carriers requesting to register to operate as motor carriers of passengers or property in interstate commerce between Mexico and points in the United States **beyond** the municipalities and commercial zones adjacent to the border, and for all Mexican persons or entities who had previously filed applications for registration under NAFTA provisions and who are required to supplement the information in their original applications by completing and re-filing the revised Form OP-1(MX).

For FMCSA Use Only

Docket No. MX_____

DOT No. _____

Filed _____

Fee No. _____

CC Approval Number _____

Application Tracking Number _____

PAPERWORK BURDEN

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. It is estimated that an average of 4 burden hours per response is required to complete this collection of information. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments concerning the accuracy of this burden estimate or suggestions for reducing this burden should be directed to the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 400 Virginia Avenue, S.W., Suite 600, Washington, DC 20024

SECTION I - APPLICANT INFORMATION

LEGAL BUSINESS NAME:_____

DOING BUSINESS AS NAME: (Trade Name, if any) _____

_____

BUSINESS ADDRESS: (Actual Street Address):

(Street Name and Number)

(City) (State) (Country) (Zip Code)

(Colonia)

(_____)_____ (_____)_____

(Telephone Number) (Fax Number)

MAILING ADDRESS: (If different from above)

(Street Name and Number)

(City) (State) (Country) (Zip Code)

(Colonia)

U.S. ADDRESS: (Does the applicant currently have an office in the United States? If yes, give address and telephone number.)

(Street Name and Number)

(City) (State) (Country) (Zip Code)

(_____)_____ (_____)_____

(Telephone Number) (Fax Number)

APPLICANT'S REPRESENTATIVE: (Person who can respond to inquiries)

(Name and title, position, or relationship to applicant)

(Street Name and Number)

(City) (State) (Country) (Zip Code)

(Colonia – Mexican addresses only)

(_____)_____ (_____)_____

(Telephone Number) (Fax Number)

US DOT NUMBER (If available) _____

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FORM OF BUSINESS (Check one)

☐ CORPORATION (Give Mexican or U.S. State of Incorporation) _____

_____

☐ SOLE PROPRIETORSHIP (Give full name of individual)

_____

(First Name) (Middle Name) (Surname)

☐ PARTNERSHIP (Give full name of each partner)_____

_____

SECTION IA – ADDITIONAL APPLICANT INFORMATION

1. Does the applicant currently operate in the United States?

☐ Yes ☐ No

1a. If yes, indicate the locations where the applicant operates and the ports of entry utilized.

_____

_____

_____

2. Has the applicant previously completed and submitted a Form MCS-150?

☐ Yes ☐ No

2a. If yes, give the name under which it was submitted.

_____

_____

3. Does the applicant presently hold, or has it ever applied for, regular (MC) or Mexican (MX) authority from the former U.S. Interstate Commerce Commission, the U.S. Federal Highway Administration, the Office of Motor Carrier Safety, or the Federal Motor Carrier Safety Administration of the U.S. Department of Transportation under the name shown on this application, or under any other name?

☐ Yes ☐ No

3a. If yes, please identify the lead docket number(s) assigned to the application or grant of authority.

_____

_____

3b. If the application was rejected before the time a lead docket number(s) was assigned, please provide the name of the applicant shown on the application.

_____

_____

3c. If yes, did FMCSA revoke the applicant's provisional operating authority or provisional Certificate of Registration after April 18, 2002, because the applicant failed to receive a Satisfactory safety rating or because the FMCSA otherwise determined the applicant's basic safety management controls were inadequate.

☐ Yes ☐ No

3d. If the applicant answered yes to 3c above, it must explain how it has corrected the deficiencies that resulted in revocation, explain what effectively functioning basic safety management systems the applicant has in place, and provide any information and documents that support its case. (If the applicant requires more space, **attach the information to this application form**.)

_____

_____

_____

_____

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4. Does the applicant hold a Federal Tax Number from the U.S. Government?

☐ Yes ☐ No

4a. If yes, enter the number here: _____

5. Is the applicant registered with the Mexican Government's Secretaria de Comunicaciones y Transportes (SCT)?

☐ Yes ☐ No

5a. If yes, give the name under which the applicant is registered with the SCT, the applicant's RFC Number, and the place where SCT Registration was issued.

_____

_____

_____

_____

_____

5b. If no, indicate the date the applicant applied with SCT.

_____

SECTION II – AFFILIATIONS INFORMATION

Disclose any relationship the applicant has, or has had, with any U.S. or foreign motor carrier, broker, or freight forwarder registered with the former ICC, FHWA, Office of Motor Carrier Safety, or Federal Motor Carrier Safety Administration within the past 3 years. For example, this relationship could be through a percentage of stock ownership, a loan, a management position, a wholly-owned subsidiary, or other arrangement.

If this requirement applies to the applicant, provide the name of the affiliated company, the latter's MC or MX number, its U.S. DOT Number, if any, and the company's latest U.S. DOT safety rating. Applicant must indicate whether these entities have been disqualified from operating commercial motor vehicles anywhere in the United States pursuant to Section 219 of the Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106-159, 113 Stat. 1748)(MCSIA). (If the applicant requires more space, **attach the information to this application form**.)

Name of affiliated company	MC or MX Number	U.S. DOT Number	U.S. DOT Safety Rating	Ever Disqualified under Section 219 of the MCSIA?

SECTION III – TYPE(S) OF REGISTRATION REQUESTED

Applicant must submit a filing fee for each type of registration requested (for each checked box).

Applicant seeks to provide the following transportation service:

PASSENGER REGISTRATION

- ❑ Service as a **common carrier** of passengers between Mexico and the United States.
- ❑ Service as a **contract carrier** between Mexico and the United States, under continuing contract(s) with persons or organizations requiring passenger transportation service.

PROPERTY REGISTRATION

- ❑ **Motor Common Carrier of Property (except Household Goods).** Under NAFTA Annex I, page I-U-20, a Mexico-domiciled carrier may not provide point-to-point transportation services, including express delivery services, within the United States for goods other than international cargo.
- ❑ **Motor Contract Carrier of Property (except Household Goods).** Under NAFTA Annex I, page I-U-20, a Mexico-domiciled carrier may not provide point-to-point transportation services, including express delivery services, within the United States for goods other than international cargo.
- ❑ **Motor Common Carrier of Household Goods.**
- ❑ **Motor Contract Carrier of Household Goods.**
- ❑ **Motor Private Carrier.**

SECTION IV – INSURANCE INFORMATION

MOTOR PASSENGER CARRIER APPLICANTS

All motor passenger carriers operating in the United States, including Mexico-domiciled carriers, must maintain public liability insurance. The amounts in parentheses represent the minimum amount of coverage required.

Applicant will use (*check only one*):

- ❑ Any vehicle has a seating capacity of 16 passengers or more ($5,000,000)
- ❑ All vehicles have seating capacities of 15 passengers or fewer only ($1,500,000)

MOTOR PROPERTY CARRIER APPLICANTS *(including Household Goods Carriers)*

NOTE: Refer to **SECTION IV** under the *Instructions to the Form OP-1(MX)* for information on cargo insurance filing requirements for motor common carriers.

- ❑ Applicant will operate vehicles having a gross vehicle weight rating (GVWR) of 10,000 pounds or more to transport:
  - ❑ Non-hazardous commodities ($750,000)
  - ❑ Hazardous materials referenced in the FMCSA insurance regulations at 49 CFR § 387.303(b)(2)(c) ($1,000,000).
  - ❑ Hazardous materials referenced in the FMCSA insurance regulations at 49 CFR § 387.303(b)(2)(b) ($5,000,000).
- ❑ Applicant will operate only vehicles having a GVWR under 10,000 pounds to transport:
  - ❑ Any quantity of Division 1.1, 1.2 or 1.3 explosives; and quantity of poison gas (Division 2.3, Hazard Zone A or Division 6.1, Packing Group 1, Hazard Zone A materials); or highway route controlled quantity of radioactive materials ($5,000,000).
  - ❑ Commodities other than those listed above ($300,000).

Does the applicant presently hold public liability insurance?

☐ Yes ☐ No

If applicant does hold such insurance, please provide the information below:

Insurance Company: _____
Address: _____
_____
Maximum Insurance Amount: _____
Policy Number: _____
Date Issued: _____
Insurance Effective Date: _____
Insurance Expiration Date: _____

Does applicant presently operate or has it operated under trip insurance issued for movements in U.S. border commercial zones?

☐ Yes ☐ No

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SECTION V – SAFETY CERTIFICATIONS

Applicant certifies that it is exempt from the U.S. DOT Federal Motor Carrier Safety Regulations (FMCSRs) because it will operate only small vehicles (GVWR under 10,001 pounds) and will not transport hazardous materials.

_____Yes _____No

If applicant answers yes, it must complete the following single safety certification, skip to the end of this section, sign the certification, and complete questions 1 and 2 under the next section - **Safety and Compliance Information and Attachments to Section V**.

Applicant certifies that it is familiar with and will observe general operational safety fitness guidelines and applicable State, local and tribal laws relating to the safe operation of commercial vehicles.

_____Yes

If applicant answers No, it must complete the remaining questions in Section V, sign the certification, and complete the **Safety and Compliance Information and Attachments for Section V**.

Applicant maintains current copies of all U.S. DOT Federal Motor Carrier Safety Regulations, Federal Motor Vehicle Safety Standards, and the Hazardous Materials Regulations (if a property carrier transporting hazardous materials), understands and will comply with such Regulations, and has ensured that all company personnel are aware of the current requirements.

_____Yes

Applicant certifies that the following tasks and measures will be fully accomplished and procedures fully implemented before it commences operations in the United States:

1. Driver qualifications:

The carrier has in place a system and procedures for ensuring the continued qualification of drivers to operate safely, including a safety record for each driver, procedures for verification of proper licensing of each driver, procedures for identifying drivers who are not complying with the U.S. and

Mexican safety regulations, and a description of a retraining and educational program for poorly performing drivers.

_____Yes

The carrier has procedures in place to review drivers' employment and driving histories for at least the last 3 years, to determine whether the individual is qualified and competent to drive safely.

_____Yes

The carrier has established a program to review the records of each driver at least once every 12 months and will maintain a record of the review.

_____Yes

The carrier will ensure, once operations in the United States have begun, that all of its drivers operating in the United States are at least 21 years of age and possess a valid Licencia Federal de Conductor (LFC) and that the driver's LFC is registered in the SCT database.

_____Yes

2. Hours of service:

The carrier has in place a record keeping system and procedures to monitor the hours of service performed by drivers, including procedures for continuing review of drivers' log books, and for ensuring that all operations requirements are complied with.

_____Yes

The carrier has ensured that all drivers to be used in the United States are knowledgeable of the U.S. hours of service requirements, and has clearly and specifically instructed the drivers concerning the application to them of the 10 hour, 15 hour, and 60 and 70 hour rules, as well as the requirement for preparing daily log entries in their own handwriting for each 24 hour period.

_____Yes

The carrier has **attached to this application** statements describing the carrier's monitoring procedures to ensure that drivers complete logbooks correctly, and describing the carrier's record keeping and driver review procedures.

_____Yes

The carrier will ensure, once operations in the United States have begun, that its drivers operate within the hours of service rules and are not fatigued while on duty.

_____Yes

3. Drug and alcohol testing:

The carrier is familiar with the alcohol and controlled substance testing requirements of 49 CFR part 382 and 49 CFR part 40 and has in place a program for systematic testing of drivers.

_____Yes

The carrier has **attached to this application** the name, address, and telephone number of the person(s) responsible for implementing and overseeing alcohol and drug programs, and also of the drug testing laboratory and alcohol testing service that are used by the company.

_____Yes

4. Vehicle condition:

The carrier has established a system and procedures for inspection, repair and maintenance of its vehicles in a safe condition, and for preparation and maintenance of records of inspection, repair and maintenance in accordance with the U.S. DOT's Federal Motor Carrier Safety Regulations and the Hazardous Materials Regulations.

_____Yes

The carrier has inspected all vehicles that will be used in the United States before the beginning of such operations and has proof of the inspection on-board the vehicle as required by 49 CFR 396.17.

_____Yes

The carrier's vehicles were manufactured or have been retrofitted in compliance with the applicable U.S. DOT Federal Motor Vehicle Safety Standards.

_____Yes

The carrier will ensure that all vehicles operated in the United States are inspected at least every 90 days by a certified Commercial Vehicle Safety Alliance inspector in accordance with the requirements for a Level I Inspection under the criteria of the North American Standard Inspection, as defined in 49 CFR 350.105, once operations in the United States begin and until such time as the carrier has held permanent operating authority from the FMCSA for at least 36 consecutive months. After the 36-month period expires, the carrier will ensure that all vehicles operated in the United States are inspected in accordance with 49 CFR 396.17 at least once every 12 months thereafter.

_____Yes

The carrier will ensure, once operations in the United States have begun, that all violations and defects noted on inspection reports are corrected before vehicle and drivers are permitted to enter the United States.

_____Yes

5. Accident monitoring program:

The carrier has in place a program for monitoring vehicle accidents and maintains an accident register in accordance with 49 CFR 390.15.

_____Yes

The carrier has **attached to this application** a copy of its accident register for the previous 12 months, or a description of how the company will maintain this register once it begins operations in the United States.

_____Yes

The carrier has established an accident countermeasures program and a driver training program to reduce accidents.

_____Yes

The carrier has **attached to the application** a description and explanation of the accident monitoring program it has implemented for its operations in the United States.

_____Yes

6. Production of records:

The carrier can and will produce records demonstrating compliance with the safety requirements within 48 hours of receipt of a request from a representative of the USDOT/FMCSA or other authorized Federal or State official.

_____Yes

The carrier is including as an **attachment to this application** the name, address and telephone number of the employee to be contacted for requesting records.

_____Yes

7. Hazardous Materials (to be completed by carriers of hazardous materials only).

The HM carrier has full knowledge of the U.S. DOT Hazardous Materials Regulations, and has established programs for the thorough training of its personnel as required under 49 CFR part 172, Subpart H and 49 CFR 177.816. The HM carrier has **attached to this application** a statement providing information concerning (1) the names of employees responsible for ensuring compliance with HM regulations, (2) a description of their HM safety functions, and (3) a copy of the information used to provide HM training.

_____Yes

The carrier has established a system and procedures for inspection, repair and maintenance of its reusable hazardous materials packages (cargo tanks, portable tanks, cylinders, intermediate bulk containers, etc.) in a safe condition, and for preparation and maintenance of records of inspection, repair, and maintenance in accordance with the U.S. DOT Hazardous Materials Regulations.

_____Yes

The HM carrier has established a system and procedures for filing and maintaining HM shipping documents.

_____Yes

The HM carrier has a system in place to ensure that all HM trucks are marked and placarded as required by 49 CFR part 172, Subparts D and F.

_____Yes

The carrier will register under 49 CFR part 107, Subpart G, if transporting any quantity of hazardous materials requiring the vehicle to be placarded.

_____Yes

7A. For Cargo Tank (CT) Carriers (of HM):

The carrier **submits with this application** a certificate of compliance for each cargo tank the company utilizes in the U.S., together with the name, qualifications, CT number, and CT number registration statement of the facility the carrier will be utilizing to conduct the test and inspections of such tanks required by 49 CFR part 180.

_____Yes

_____

Signature of applicant

By signing these certifications, the carrier official is on notice that the representations made herein are subject to verification through inspections in the United States and through the request for and examination of records and documents. Failure to support the representations contained in this application could form the basis of a proceeding to assess civil penalties and/or lead to the revocation of the authority granted.

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Safety and Compliance Information and Attachments for Section V

1. Individual responsible for safe operations and compliance with applicable regulatory and safety requirements.

NAME	ADDRESS	POSITION

2. Location where current copies of the Federal Motor Carrier Safety Regulations and other regulations are maintained.

ATTACHMENT FOR SECTION V, NO. 1, DRIVER QUALIFICATIONS
Intentionally Left Blank

ATTACHMENT FOR SECTION V, NO. 2, HOURS OF SERVICE

MONITORING STATEMENTS

Statements describing monitoring procedures for ensuring correctness of logbook completion by drivers and describing record keeping and driver review procedures.

ATTACHMENT FOR SECTION V, NO. 3, DRUG AND ALCOHOL TESTING

Person(s) responsible for implementing and overseeing alcohol and drug programs.

NAME	ADDRESS	POSITION

The drug testing laboratory and the alcohol testing service that are used by the carrier.

NAME	ADDRESS	TELEPHONE NO.

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ATTACHMENT FOR SECTION V, NO. 4,
Intentionally Left Blank

ATTACHMENT FOR SECTION V, NO. 5, ACCIDENT MONITORING PROGRAM

1. Describe how company will maintain accident register (49 CFR 390.15(b)) once it begins operations in U.S.

ATTACHMENT FOR SECTION V, NO. 5, ACCIDENT MONITORING PROGRAM

2. Describe and explain accident monitoring program for operations in U.S. (49 CFR 391.25 and 391.27).

ATTACHMENT FOR SECTION V, NO. 6, PRODUCTION OF RECORDS

Contact person(s) for requesting records:

Name	Address	Telephone Number

ATTACHMENT FOR SECTION V, NO. 7, HAZARDOUS MATERIALS (TO BE COMPLETED BY CARRIERS OF HAZARDOUS MATERIALS ONLY)

Statement respecting person(s) (other than drivers) responsible for ensuring compliance with HM regulations (49 CFR 172.704) for HM activities.

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ATTACHMENT FOR SECTION V, NO. 7A, (FOR CARGO TANK CARRIERS OF HM)

Cargo Tank Information (HM) (49 CFR part 180, Subpart E):

SECTION VI - HOUSEHOLD GOODS ARBITRATION CERTIFICATIONS

Household Goods Motor Common and Contract Carrier Applicants must certify as follows:

Household goods carrier registration is now conditioned on the carrier's agreement to offer arbitration as a means of settling loss and damage claims.

Applicant certifies that it will offer arbitration in accordance with the requirements of 49 U.S.C. § 14708.

_____
Signature

SECTION VII – SCOPE OF OPERATING REGISTRATION SOUGHT

1. Applicant seeks to provide the following transportation service in foreign commerce:

   - ❑ For a Mexican carrier to transport property between the United States–Mexico international border and all points in the United States (except under NAFTA Annex I, page I-U-20, a Mexico-domiciled carrier may not provide point-to-point transportation services, including express delivery services, within the United States for goods other than international cargo).

   - ❑ For Mexican passenger carriers, charter and tour bus operations between the U.S.-Mexico international border and points in the United States.

   - ❑ For Mexican passenger carriers, service as a common carrier over regular routes. (Regular route passenger carrier authority to perform regularly scheduled service only over named roads or highways.) Regular route passenger service includes authority to transport newspapers, baggage of passengers, and mail in the same motor vehicle with passengers, or baggage of passengers in a separate motor vehicle.

   Applicants requesting registration to operate over regular routes – On a **separate sheet of paper attached to the application**, describe the specific route involved in applicant's passenger carrier service description(s). Applicant must also furnish a map clearly identifying each regular route involved in its passenger carrier service description(s).

2. Indicate the principal border crossing points which applicant intends to utilize.

   _____
   _____
   _____

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SECTION VIII – COMPLIANCE CERTIFICATIONS

All applicants must certify as follows:

- Applicant is willing and able to provide the proposed operations or service and to comply with all pertinent statutory and regulatory requirements and regulations issued or administered by the U.S. Department of Transportation, including operational regulations, safety fitness requirements, motor vehicle safety standards, and minimum financial responsibility requirements.

  _____ Yes

- Applicant has paid any taxes it owes under Section 4481 of the U.S. Internal Revenue Service (26 U.S.C. §4481) for the most recent taxable period as defined under Section 4482(c) of the Internal Revenue Code.

  _____ Yes

- Applicant understands that the agent(s) for service of process designated on FMCSA Form BOC-3 will be deemed applicant's official representative(s) in the United States for receipt of filings and notices in administrative proceedings under 49 U.S.C. 13303, and for receipt of filings and notices issued in connection with the enforcement of any Federal statutes or regulations.

  _____ Yes

- Applicant is willing and able to produce for review or inspection documents which are requested for the purpose of determining compliance with applicable statutes and regulations administered by the Department of Transportation, including the Federal Motor Carrier Safety Regulations, Federal Motor Vehicle Safety Standards and Hazardous Materials Regulations, within 48 hours of any written request. Applicant understands that the written request may be served on the person identified in the attachment for Section V, number 6, or the designated agent for service of process.

  _____ Yes

- Applicant is willing and able to have all vehicles operated in the United States inspected at least every 90 days by a certified Commercial Vehicle Safety Alliance inspector and have decals affixed attesting to satisfactory compliance with Level I CVSA Inspection criteria. This requirement will end after applicant has held permanent operating authority from FMCSA for three consecutive years.

  _____ Yes

- Applicant is not presently disqualified from operating a commercial vehicle in the United States pursuant to the Motor Carrier Safety Improvement Act of 1999.

  _____ Yes

- Applicant is not prohibited from filing this application because its FMCSA registration is currently under suspension or was revoked less than 30 days before the filing of this application.

  _____ Yes

_____

Signature

All motor carriers operating within the United States, including Mexico-domiciled motor carriers applying for operating authority under this form, must comply with all pertinent Federal, State, local and tribal statutory and regulatory requirements when operating within the United States. Such requirements include, but are not limited to, all applicable statutory and regulatory requirements administered by the U.S. Department of Labor, or by an OSHA state plan agency pursuant to Section 18 of the Occupational Safety and Health Act of 1970. Such requirements also include all applicable statutory and regulatory environmental standards and requirements administered by the U.S. Environmental Protection Agency or a State, local or tribal environmental protection agency. Compliance with these statutory and regulatory requirements may require motor carriers and/or individual operators to produce documents for review and inspection for the purpose of determining compliance with such statutes and regulations.

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SECTION IX – APPLICANT'S OATH

APPLICANT'S OATH MUST BE COMPLETED (SIGNED) BY APPLICANT

I, _____,

(First Name) (Middle Name) (Surname) (Title)

verify under penalty of perjury, under the laws of the United States of America, that I understand the foregoing certifications and that all responses are true and correct. I certify that I am qualified and authorized to file this application. I know that willful misstatement or omission of material facts constitute Federal criminal violations under 18 U.S.C. §§ 1001 and 1621 and that each offense is punishable by up to 5 years imprisonment and a fine under Title 18, United States Code, or civil penalties under 49 U.S.C. §521(b)(2)(B) and 49 U.S.C. Chapter 149.

I further certify that I have not been convicted in U.S. Federal or State courts, after September 1, 1989, of any offense involving the distribution or possession of controlled substances, or that if I have been so convicted, that I am not ineligible to receive U.S. Federal benefits, either by court order or operation of law, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 862).

_____ _____

(Signature) (Date)

_____

(Applicant's Title, e.g., President or Owner)

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FMCSA FILING FEES

Fee Schedule effective January 1996 Fee for Registration . . . $300.00

FEE POLICY

- Filing fees must be payable to the **Federal Motor Carrier Safety Administration**, by check drawn upon funds deposited in a bank in the United States or money order payable in U.S. currency or by approved credit card.
- Separate fees are required for each **type of registration** requested. If applicant requests registration as a for-hire motor carrier and as a motor private carrier, multiple fees are required. The applicant may submit a single payment for the sum of the applicable fees.
- Filing fees must be **sent along with the original and one copy of the application** to the appropriate address under the paragraph titled **MAILING INSTRUCTIONS** on page 10 of the instructions to this form.
- After an application is received, the filing fee is non-refundable.
- An application submitted with a personal check will be held for 30 days from the date received. The FMCSA reserves the right to discontinue processing any application for which a check is returned due to insufficient funds. No application will be processed until the fee is paid in full.
- **NO FILING FEE IS REQUIRED FOR APPLICANTS WHO SUBMITTED A FORM OP-1(MX) BEFORE MARCH 19, 2002.**

FILING FEE INFORMATION

All applicants must submit a filing fee of $300.00 for each type of registration requested. The total amount due is equal to the fee(s) times the number of boxes checked in ***Section III*** of the Form OP-1(MX). Fees for multiple authorities may be combined in a single payment.

Total number of boxes checked in ***Section III*** _____ x filing fee $ _____ = $ _____

INDICATE AMOUNT $_____ AND METHOD OF PAYMENT:

☐ CHECK OR ☐ MONEY ORDER, PAYABLE TO: **FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

☐ VISA ☐ MASTERCARD

Credit Card Number _____

Expiration Date: _____

Signature _____ Date: _____

Form OP-1(MX)
Revised March 2002

[FR Doc. 02–5891 Filed 3–14–02; 8:45 am]
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Federal Register

Tuesday,
March 19, 2002

Part IV

Department of Transportation

Federal Motor Carrier Safety Administration

49 CFR Part 385

Safety Monitoring System and Compliance Initiative for Mexico-Domiciled Motor Carriers Operating in the United States; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 385

[Docket No. FMCSA–98–3299]

RIN 2126–AA35

Safety Monitoring System and Compliance Initiative for Mexico-Domiciled Motor Carriers Operating in the United States

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), (DOT).

ACTION: Interim final rule (IFR); request for comments.

SUMMARY: The FMCSA implements a safety monitoring system and compliance initiative designed to evaluate the continuing safety fitness of all Mexico-domiciled motor carriers within 18 months after receiving a provisional Certificate of Registration or provisional authority to operate in the United States. This rule includes requirements that were not proposed in the NPRM, but which are necessary to comply with the Fiscal Year 2002 DOT Appropriations Act enacted into law in December 2001. The rule also establishes suspension and revocation procedures for provisional Certificates of Registration and operating authority and incorporates criteria to be used by FMCSA in evaluating whether Mexico-domiciled carriers exercise basic safety management controls. Therefore, the FMCSA is publishing this action as an interim final rule and is delaying the effective date in order to consider additional public comments regarding the safety monitoring system for Mexico-domiciled carriers. The revisions in this action are part of FMCSA's efforts to ensure the safe operation of Mexico-domiciled motor carriers in the United States.

DATES: This interim final rule is effective May 3, 2002. We must receive comments by April 18, 2002.

ADDRESSES: You can mail, fax, hand deliver or electronically submit written comments to the Docket Management Facility, United States Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001 FAX (202) 493–2251, on-line at *http://dmses.dot.gov/submit.* You must include the docket number that appears in the heading of this document in your comment. You can examine and copy all comments at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. You can also view all comments or download an electronic copy of this document from the DOT Docket Management System (DMS) at *http://dms.dot.gov/search.htm* and typing the last four digits of the docket number appearing at the heading of this document. The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the ''help'' section of the web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Comments received after the comment closing date will be included in the docket and we will consider late comments to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Lamm, (202) 366–9699, FMCSA, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., p.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

FMCSA published the notice of proposed rulemaking (NPRM) for this action on May 3, 2001 (66 FR 22415) along with two related NPRMs proposing changes to the forms and procedures for Mexico-domiciled motor carriers to apply to operate in the United States. FMCSA is publishing one interim final rule and one final rule for those two NPRMs concurrently with this action. The preambles to those rules set out the background and history of the NAFTA issues and are not repeated here.

On December 18, 2001, the President signed into law the Fiscal Year 2002 DOT Appropriations Act, Public Law 107–87 (the Act). Section 350 of the Act prohibits the expenditure of appropriated funds for reviewing or processing applications by Mexico-domiciled carriers to operate beyond the commercial zones of municipalities in the United States located on the Mexican border (Mexico-domiciled long-haul carriers) until FMCSA and DOT take several specified actions. These actions include conducting pre-authorization safety examinations on Mexico-domiciled long-haul carriers, and complying with certain inspection, staffing, rulemaking and reporting requirements. As pertinent to this rulemaking proceeding, Section 350(a)(2) of the Act requires that FMCSA conduct a full safety compliance review on Mexico-domiciled long-haul carriers within 18 months after the carrier is granted provisional operating authority. Section 350(a)(5) requires mandatory inspection of Mexico-domiciled long-haul commercial vehicles that do not display a valid Commercial Vehicle Safety Alliance (CVSA) decal, unless the carrier has been granted permanent operating authority for three consecutive years. Accordingly, we are revising the proposed rule to implement the compliance review requirement. We are also imposing a requirement that all long-haul Mexico-domiciled carriers entering the United States display a valid CVSA sticker on their vehicles while operating under provisional status.

Summary of Parties Submitting Comments

The agency received over 200 comments. Many comments were submitted to one or all three dockets for the May 3 NPRMs. The following discussion addresses substantive comments relevant to the safety monitoring and oversight system.

The commenters may be categorized as follows:

(1) Ten United States Senators: Senators Max Baucus, Evan Bayh, Jeff Bingaman, Thomas A. Daschle, Richard J. Durbin, Tom Harkin, Edward M. Kennedy, John F. Kerry, John Kyl, and Ron Wyden, submitted one unified set of comments to the President, who forwarded their comments to the docket.

(2) More than 180 private citizens. One hundred sixteen of these citizens submitted an ''Urgent Action Alert'' form letter compiled and distributed by Citizens for Reliable and Safe Highways (CRASH) or alluded to recommendations in the form letter. The CRASH suggestions are discussed later in this document. Comments were also received from 20 Tucson/Green Valley, Arizona citizens.

(3) Four Mexican associations: the Asociacion Nacional De Transporte Privado (a national private motor carrier association), Camara Nacional Del Autotransporte De Carga A.C. (CANACAR) (a national trucking association), Asociacion De Agentes Aduanales De Nuevo Laredo (a customs broker association), and Central de Servicos de Carga de Nuevo Laredo (CenSeCar) (a local trucking association of Nuevo Laredo).

(4) Four labor organizations: the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO), the Amalgamated Transit Union (ATU), the International Brotherhood of Teamsters (Teamsters),

and the AFL–CIO's Transportation Trades Department representing 33 unions (TTD). The TTD submitted separate comments from the AFL–CIO, its parent organization.

(5) Four motor carrier associations: the American Bus Association (ABA), American Trucking Associations, Inc., (ATA), the California Trucking Associations (CTA), and the Owner-Operator Independent Drivers Association (OOIDA).

(6) Three Texas transportation associations: the San Antonio Free Trade Alliance, Association of Laredo Freight Forwarding Agents, and Laredo Transportation Association.

(7) Four safety advocacy groups: CRASH, Public Citizen, the American Automobile Association (AAA), and Advocates for Highway and Auto Safety (AHAS).

(8) Four environmental groups that submitted one unified response: Friends of the Earth, the Sierra Club, the Natural Resources Defense Council and the Center for International Environmental Law.

(9) Three law enforcement agencies: the California Attorney General, the California Highway Patrol, and the Arizona Department of Public Safety.

(10) Two associations representing State enforcement and licensing agencies: the Commercial Vehicle Safety Alliance (CVSA) and the American Association of Motor Vehicle Administrators (AAMVA).

(11) Three motor carriers: United Parcel Service (UPS), Greyhound Lines and Transportes Quintanilla S.A. de C.V.

(12) The Transportation Lawyers of America, Air Courier Conference of America, Transportation Consumer Protection Council, the Laredo Chamber of Commerce, the National Association of Independent Insurers (NAII), and the American Insurance Association (AIA) each submitted one comment.

Discussion of Comments to the NPRM

The municipalities adjacent to Mexico in Texas, New Mexico, Arizona, and California and the commercial zones of such municipalities will be referred to as ''border zones'' for the purposes of this document.

United States Senators

Senators Baucus, Bayh, Bingaman, Daschle, Durbin, Harkin, Kennedy, Kerry, Kyl and Wyden believe that the Mexican government does not have a domestic truck safety system equivalent to that provided under U.S. law. They state that Mexico does not have hours-of-service laws and has only recently proposed the use of logbooks to record driving history. Therefore, they believe that cross-border truckers could easily enter U.S. highways fatigued. They note the DOT Inspector General has stated repeatedly that ''fatigue is a major factor in commercial vehicle crashes.''

The Senators believe that a ''lack of sufficient inspection resources at the border and the proposed 18-month delay between the approval of general cross-border trucking applications and actual safety enforcement means that trucks may easily enter the United States over federal weight and size limits, a condition both inherently more dangerous to travelers and more stressful to our roadways.''

The Senators urged the President to not grant operating certificates until the administration completes onsite compliance reviews and ensures the safety of the American traveler.

CRASH ''Urgent Action Alert'' Form Letter and Excerpts

One hundred sixteen individuals submitted comments repeating one or more of three standard phrases suggested by CRASH's ''Urgent Action Alert''. These phrases are as follows:

(1) Allowing Mexican carriers to operate for up to 18 months before a safety audit is done by U.S. officials is totally unacceptable. Safety audits must be done before Mexican carriers are allowed to enter the U.S.

(2) Application forms and processes are important and necessary but as a member of CRASH and a concerned highway safety advocate, the U.S./Mexico border should remain closed to increased NAFTA cross-border trucking until meaningful safety standards and significantly increased compliance oversight are in place on both sides of the border.

(3) Not one human life should be sacrificed on the alter [sic] of NAFTA cross-border trucking.

Individuals

Al Feuer wrote that the border should be opened to truck traffic. He also believes safety inspections/audits should not be required before allowing Mexican trucks into the United States. Mr. Feuer reasoned that advance auditing would be unfair and statistically impractical because many Mexican drivers would be unable to read road signs and markings printed in English. He believes ''it would be unfair to make Mexican truck drivers meet the same safety standards as American truck drivers—who can read English.'' Mr. Feuer believes advance auditing would not be cost effective, but it would be more cost effective to allow Mexico-domiciled motor carriers onto our highways for 18-months and then audit the results. Mr. Feuer writes ''FMCSA could easily glean accident investigation data by tapping into computers at various local and State law enforcement agencies. Then it would simply be a matter of adding the number of Americans killed and injured by unsafe Mexican truck drivers. Those who caused more deaths and injuries than United States truck drivers could be banned from United States highways; those who caused fewer deaths and injuries than United States truck drivers could continue driving in the United States. There's your audit.''

Mark Pizenche, a Land Line magazine reader, believes the requirements are good, if they can be enforced. He suggests having a sign in clear sight identifying Mexican trucks, such as a flag on a plate.

Green Valley, Arizona Residents

Elmer Silaghi, a Green Valley resident, is concerned about the safety of highway conditions along Interstate 19 near Green Valley, a retirement community located between Nogales and Tucson, Arizona. He believes that implementation of the NAFTA access provisions will exacerbate the community's existing commercial vehicle traffic congestion. The docket also received 19 comments from Tucson and Green Valley residents referring to Mr. Silaghi's letter or stating identical concerns.

Mexican Associations

Camara Nacional Del Autotransporte De Carga A.C. (CANACAR) (a Mexican Trucking Association representing the Mexican trucking industry) opposes the proposal. It believes the proposed entrance requirements are too difficult. It states that ''consciously or unconsciously, all three of FMCSA's proposals unfortunately are permeated with anti-Mexican sentiments * * * disguised in the form of concern for highway safety * * * based on false assumptions.'' CANACAR believes Mexican trucks are safer than those operated by the U.S. trucking industry. To support this position, CANACAR stated that the out-of-service rate for U.S. and Mexican drayage companies are not very different.

Asociacion De Agentes Aduanales De Nuevo Laredo and Central de Servicos de Carga de Nuevo Laredo (CenSeCar) had similar comments. Each believes imposing inspections on short-haul carriers at the border would impact the efficient flow of traffic as well as be an unfair practice compared with the northern border. The two borders are different, they assert, and a single cookie cutter approach should not be applied. They are also concerned that all government agencies on the border

are grossly understaffed. They believe that imposing unfunded mandates and new procedures without regard to staffing is categorically wrong and shortsighted.

Labor Organizations

The AFL–CIO, ATU, TTD, and the Teamsters argued that opening the border is premature because of deficiencies in Mexico's internal safety standards for motor vehicles, and that a stronger implementation plan approved by the DOT Office of Inspector General is needed. The ATU fully supports and agrees with comments submitted by the AFL–CIO. It also concurs in Greyhound's comments, with one minor exception: ATU opposes the proposal to allow up to 18 months before a safety audit is conducted on a Mexico-domiciled carrier. The common viewpoints of ATU and Greyhound are outlined as follows:

(1) Mexican buses should not be authorized to operate in the United States absent reciprocal treatment of U.S. buses by Mexico.

(2) Mexican buses must be certified as safe before the first day they are authorized to operate in the United States.

(3) FMCSA must develop and implement an effective enforcement plan before opening the border.

(4) U.S. subsidiaries of Mexican companies must be subject to the same standards and reviews as their Mexican parent companies.

(5) Application and oversight rules must be applied to small passenger carrying vehicle operations (9 to 15 passengers), as well as cross-border bus operations.

(6) Application forms must require detailed explanations of compliance measures to ensure a full understanding of the applicable laws.

Motor Carrier Associations

American Bus Association (ABA)

The American Bus Association believes there is too little inspection of buses at the border and that FMCSA should do more border inspections. It believes FMCSA should enforce compliance with the Federal Motor Vehicle Safety Standards (FMVSS) maintained and enforced by the National Highway Traffic Safety Administration.

The ABA believes a final rule imposing the Federal Motor Carrier Safety Regulations (FMCSR) on 9-to 15-passenger vans is necessary, alleging that the poor safety record of these small passenger carrying vehicle operations must be a part of FMCSA's enforcement plan.

ABA argues that the proposed safety monitoring system is inadequate to protect passengers because the rule would only apply to operators providing cross border services. It believes FMCSA should provide the same scrutiny to Mexican-owned, U.S.-domiciled carriers as it does to Mexican-owned, Mexico-domiciled carriers. ABA contends that these Mexican-owned companies providing domestic service in the United States will probably have a greater impact in the United States than any other type of service. ABA believes that it is critical for these operations to be included in the safety evaluation process. Although such operations are subject to the FMCSRs, they are not subject to the safety monitoring system described in this action or the two NAFTA-related rulemakings published elsewhere in today's **Federal Register**. ABA believes that the NAFTA Arbitral Panel provided FMCSA with the discretion to apply a heightened level of scrutiny and enforcement measures toward Mexican companies operating within the United States—regardless of whether they are based in Mexico or in the United States. According to ABA, ''the rules and oversight for Mexican-owned companies providing domestic U.S. service should be at least as stringent as the rules for Mexican companies providing international service.'' Accordingly, ABA believes that FMCSA must expedite a rulemaking that would put into place a procedure that ensures the safety of new entrants to the U.S. market, regardless of whether they are based in the United States or Mexico, and whether or not they are Mexico-or U.S.-owned.

ABA believes that conducting an onsite review of a motorcoach company before the issuance of operating authority would be beneficial, notwithstanding the lack of complete U.S. compliance data. ABA suggests there are several items that could be checked during an initial review, including the Mexican driver's compliance with licensing and medical certification procedures. Vehicles could also be checked to ensure that they comply with the FMVSS. ABA believes that, given the lack of safety data and history for Mexican carriers, FMCSA should consider establishing procedures that include an expeditious and comprehensive onsite review of each applicant's safety program. ABA argues that an expedited safety review procedure conducted by Federal or State enforcement personnel would do far more to ensure safety than a simple review of submitted information and the monitoring of data generated by roadside inspections that may or may not occur. ABA suggests that the educational ''Safety Review'' procedure established during the late 1980s could be used as a template for trucking operations, as it afforded an opportunity for motor carrier personnel to interact directly with enforcement personnel to explain regulatory requirements, and answer questions. However, ABA does not believe that this procedure will adequately ensure the safety of passengers.

ABA contends that our rulemaking will do nothing to ensure that the cross-border provisions of NAFTA are implemented in a reciprocal manner. It argues the proposed rule outlined how Mexican operators and drivers will be treated while in the United States, but gave no assurance that the Mexican government would implement identical policies. For example, ABA argues the Mexican government has taken the position that it will grant cross-border service authority for U.S. carriers to serve only one point in Mexico, and that it will not allow U.S. carriers to own or operate bus terminals in Mexico. ABA also states that the Mexican government has indicated that it will not authorize U.S. carriers to provide incidental package service as part of their cross-border trips. ABA believes that finalizing the cross-border access proposal without assurances of reciprocal treatment of U.S. companies by Mexico would result in unequal treatment in clear violation of both the letter and spirit of NAFTA.

American Trucking Associations, Inc. (ATA)

The ATA recommended that FMCSA provide specific guidelines for establishing safety monitoring systems, including defining a ''poorly performing driver''. The ATA recommends that FMCSA investigate the possibility that Mexico may consider the proposed safety review program an ''extraterritorial application of United States law.'' In light of that possibility, the ATA recommends that FMCSA work jointly with the Secretaria de Comunicacianos y Transportes (SCT) to establish a joint safety review program for Mexico-domiciled motor carriers.

Owner Operator Independent Drivers Association (OOIDA)

OOIDA believes there is a lack of Mexican infrastructure, resources, and the will to promulgate and enforce compatible safety regulations in Mexico. It contends there is no true equivalent to the 49 CFR Part 383 commercial drivers licensing regulations in Mexico.

OOIDA cites the DOT OIG report that there is a link between Mexican truck condition and the level of inspection resources. OOIDA believes FMCSA must have a minimum of 80 new safety inspectors to do border crossing inspections and 40 safety investigators to conduct compliance reviews before granting authority. OOIDA believes the FMCSA goal of more inspectors is correct, but the plans do not include enough personnel.

OOIDA believes FMCSA's proposal to review Mexico-domiciled carriers within 18 months after granting them authority is unrealistic and dangerous. It recommends that FMCSA conduct onsite reviews in Mexico and verify whether a Mexico-domiciled motor carrier has been placed out-of-service in Mexico, has had hazardous material incidents in Mexico, has a drug and alcohol testing program, and maintains valid proof of financial responsibility.

California Trucking Association (CTA)

CTA supports the rules as ''well-thought [out] applications and safety entry standards for Mexico-domiciled motor carriers,'' but sees a need for more resources to accomplish FMCSA goals. CTA believes the safety monitoring period should be shorter than 18 months and the program should include State and local law enforcement agencies in the review teams. It recommends involving FMCSA field offices in safety reviews because it believes the field offices know their local carriers. It also recommends promulgating review standards before the initial review period. CTA predicates its support of the three NAFTA rulemakings upon four conditions, including establishing ''a level playing field for all motor carriers through the application of the same laws and regulations.''

Safety Advocacy Groups

The safety advocacy groups believe FMCSA should conduct a safety audit before it allows a Mexico-domiciled motor carrier to operate in the United States and that FMCSA must have more U.S. inspection sites and more safety inspectors.

American Automobile Association (AAA)

The AAA's comments are generally representative of the safety groups. The AAA believes FMCSA must:

(1) Conduct safety audits *before* Mexico-domiciled trucks cross the border.

(2) Follow California's incentive to Mexico-domiciled motor carriers to display a valid CVSA decal on their trucks entering the United States. If one is not apparent, FMCSA should, like California, conduct the most rigorous CVSA, or equivalent, inspection at the border.

(3) Work closely with AAMVA to see that proper licensing procedures are in place and enforceable.

(4) Weigh trucks at the border.

(5) Demand proof of financial responsibility for every vehicle in every fleet at the border. Drivers should have to carry an insurance document unique to their particular vehicle.

(6) Ensure that every one of the 27 U.S.-Mexico border crossing points has resources to monitor compliance with the FMCSRs.

Public Citizen

Public Citizen contends the proposed rule fails to acknowledge the inadequacy of the existing enforcement structure and will not protect the public from unsafe trucks crossing into the United States. It believes unsafe trucks will inevitably escape detection and travel freely throughout the United States, endangering motorists and risking a trade-related debacle.

Public Citizen contends the penalties for Mexico-domiciled carriers under the safety monitoring program would be weaker than those currently applicable to U.S.-domiciled carriers. It argues that the serious infractions listed in proposed § 385.23 would only result in a carrier receiving a safety review—a review to which it would have to submit anyway—or a deficiency letter instructing the carrier to notify FMCSA that the problem has been corrected.

Public Citizen argues that the consequences of such violations for U.S. carriers are considerably more severe, including civil and criminal fines or even jail time. It believes allowing Mexican carriers to receive weak penalties for serious violations fails to communicate the seriousness of these violations to carriers and will not prepare them to comply with these regulations at the end of the safety oversight program.

Public Citizen also believes FMCSA omitted some serious violations from the list of violations that would trigger an expedited safety review or deficiency letter. Under the proposal, an accident resulting in a hazardous materials incident prompts the expedited safety review or deficiency letter process, but an accident resulting in death, or a violation of the hours-of-service limit, does not. Public Citizen believes potential hours-of-service violations are of particular concern because Mexican carriers require their workers to drive for much longer periods than the U.S. hours-of-service limit, and Mexican laws do not include hours-of-service rules. It believes we should add hours-of-service infractions to the list in proposed § 385.23 and publish a plan for enforcing hours-of-service limits for drivers crossing the border who are not subject to any time controls while in Mexico.

Public Citizen notes the NPRM does not specify a time limit for carriers to respond to deficiency letters before their provisional registration is suspended. Public Citizen believes it is also unclear how soon an expedited safety review would take place after a serious violation is discovered and how long a carrier can be suspended without taking corrective action before its registration is revoked. It contends that without time limits, an unsafe carrier could operate indefinitely before any limitations are placed on it. It believes we must revise the NPRM to provide definite time restrictions to ensure that non-compliant carriers do not slip through the cracks.

Public Citizen also believes that FMCSA suspension or revocation of provisional registration will not change a carrier's ability to send trucks across the border. It cites a November 1999 DOT Inspector General report finding that carriers were able to retain their certificates of registration in their vehicles and continue operating across the border even after these certificates were revoked. It believes no information would be available to inspectors to verify that a certificate of registration is valid, or to verify that a driver has a certificate of registration if he or she is not able to present it upon request.

Environmental Groups

Friends of the Earth, the Natural Resources Defense Council, the Sierra Club and The Center for International Law commented that FMCSA is required to perform additional analysis to meet the requirements of the National Environmental Policy Act (NEPA) and Executive Order 13045, concerning the protection of children.

The Attorney General for the State of California submitted a comment in which he asserted that the FMCSA would be required to perform a ''conformity determination'' pursuant to the Clean Air Act (CAA), before finalizing these rulemakings. Under the CAA, Federal agencies are prohibited from supporting in any way, any activity that does not conform to an approved State Implementation Plan (SIP), (42 U.S.C. 7006). EPA regulations implementing this provision require Federal agencies to determine whether an action would conform with the SIP

(a ''conformity determination''), before taking the action (40 CFR 93.150). The Attorney General asserts that the FMCSA must make a conformity determination before taking final action to implement regulations that would allow Mexican trucks to operate beyond the border. The Attorney General provided technical information to support his assertion that allowing Mexican trucks to operate beyond the border would likely not be in conformity with California's SIP.

Commercial Vehicle Safety Alliance (CVSA)

CVSA believes the rules will not sufficiently reassure the public. It makes eight recommendations for strengthening the monitoring program as key to its support of this rulemaking. CVSA's recommendations include:

(1) Perform ''case studies'' on Mexico-domiciled motor carriers. Case studies would facilitate a collaborative safety culture and provide objective, uniform and quantitative data upon which to base policy decisions. They would be similar to the proposed safety review, except case studies would: (a) Be completed before granting operating authority; (b) be conducted at the motor carrier's place of business; (c) include both regulatory evaluation and educational components; (d) include a representative sample of CVSA Level V inspections; and (e) adopt a collaborative approach that includes U.S., Canadian and Mexican officials. CVSA believes these case studies should initially be conducted on all carriers applying for authority to operate beyond the border zones, then on a sampling of carriers who wish to operate solely within the border zones.

(2) Require all motor carriers and drivers to renew their valid Licencia Federal de Conductor and be entered into the Mexican commercial drivers' licensing database before being granted operating authority in the United States.

(3) Work with CVSA and the States to develop the necessary legislative and policy changes for providing States the ability to enforce operating authority requirements.

(4) Investigate the equipment manufacturing standards in Mexico and report how they differ from those required in the United States, specifically with respect to compliance with the FMVSS. CVSA thinks this is particularly important to the roadside inspection program and weight enforcement.

(5) Provide clear policy direction on how to address the language issue in the field. CVSA wants us to apply a reasonable standard to determine whether a driver ''can read and speak the English language sufficiently to converse with the general public, understand highway traffic signs and signals in the English language, to respond to official inquiries and to make entries on reports and records.''

(6) Coordinate outreach and training programs that are delivered to Mexican motor carriers, drivers, and enforcement personnel. CVSA believes a clear and consistent message is important to the education and learning process.

(7) Make sure appropriate modifications are made to software and information systems in a timely manner and adequate time and resources are provided for training enforcement officials for all changes that are promulgated in the final rule.

(8) Explore multiple technology options (hardware, software, and communications), conduct the necessary due diligence and pilot test potential solutions for facilitating throughput at the borders and performing safety assessments on motor carriers. CVSA wants us to consider various types of incentives for safe operators and to encourage technology adoption.

American Association of Motor Vehicle Administrators (AAMVA)

AAMVA believes that Mexico-domiciled motor vehicles should be inspected for conformance to Federal motor carrier safety regulations before they are allowed to operate in the United States. Specifically, it supports periodic motor vehicle safety inspections similar to the CVSA inspections.

It also suggests conducting complete safety audits of carriers in Mexico before approving applications for operating authority. It believes a safety audit and inspection of vehicles before approval of operating authority will ensure that any vehicle entering the United States from Mexico comports with applicable safety standards and does not pose undue risk to citizens on the nation's roadways.

Transportation Consumer Protection Council

The Transportation Consumer Protection Council, representing 500 shippers and receivers of freight, believes FMCSA should require truck inspections before carriers are allowed into the United States.

National Association of Independent Insurers (NAII)

The NAII believes DOT was unable to do much to prepare for the beginning of true cross-border trucking during the previous administration. It believes that preparations must be our top priority and that we need more people and resources to handle the workload than were requested for fiscal year 2002. It believes the most pressing need to keep American roads safe when the border opens is for us to have a detailed plan showing who will do what and where.

American Insurance Association (AIA)

The AIA alleges that the proposed rules fail to provide for safety and are inconsistent with law, citing 49 U.S.C. 113(a) as providing for safety as the ''highest priority.'' It believes follow-up inspections should be done earlier than 18 months. The AIA also believes conducting compliance reviews under § 385.13(a) that apply the criteria for evaluating safety management controls described in § 385.7 would not be sufficient. It recommends requiring safety reviews to occur on the Mexico-domiciled motor carrier's premises.

The AIA states that different procedures are expressly permissible under NAFTA and believes FMCSA could have proposed more stringent motor carrier safety procedures on Mexican carriers.

FMCSA Response to Comments

The DOT Appropriations Act

The most common recommendation made in the comments was that Mexico-domiciled carriers undergo a safety review by FMCSA before being allowed to operate in the United States. This concern was addressed in § 350(a)(1) of the DOT Appropriations Act. The FMCSA's companion rule amending our part 365 application procedures will require that Mexico-domiciled long-haul carriers receive a safety audit before receiving provisional operating authority. This pre-authorization safety audit will include verification of performance data, safety management programs (including hours-of-service compliance, vehicle inspection and maintenance and drug and alcohol testing programs) and financial responsibility. The audit will also entail vehicle inspections, verification of driver qualifications and an interview with carrier officials to review safety management controls and evaluate written safety oversight policies and practices.

FMCSA intends to provide all Mexico-domiciled carriers educational and technical assistance when they apply for provisional operating authority or a provisional Certificate of Registration. The education and technical assistance package will consist of material designed to assist the Mexico-domiciled applicant in

complying with the FMCSRs and Hazardous Materials Regulations (HMRs) and establishing good safety management practices. It will include information on driver qualifications; controlled substances and alcohol use testing; commercial drivers licenses; minimum levels of financial responsibility; accident reports; requirements applicable to the driving of motor vehicles; vehicle inspection, repair and maintenance; hours of service and records of duty status of drivers; and requirements applicable to the transportation of hazardous materials. These materials will help long-haul carriers prepare for the pre-authorization safety audit.

We are not extending the pre-authorization audit requirement to carriers seeking to operate solely within the border zones under Certificates of Registration. Border zone operations have been permitted for nearly 20 years without a pre-authorization audit requirement. The most serious safety concerns, as evidenced by the provisions of § 350 of the Act and reflected in the comments to the NPRM, involve Mexico-domiciled carriers who will be operating vehicles beyond the border zones in long-haul service. We believe that the informational and certification requirements added to the revised OP–2 form in our companion rule and the post-operational audit required by this rule will be sufficient to protect public safety in the border zones.

Section 350(a)(2) of the Act requires FMCSA to conduct a full compliance review of Mexico-domiciled long-haul carriers within 18 months after issuance of provisional operating authority. This review will be consistent with our existing safety fitness evaluation procedures set forth in subpart A of part 385 and will result in the assignment of a safety rating. As required by section 350(a)(2), the compliance review must result in a ''Satisfactory'' safety rating before the carrier is granted permanent operating authority to operate beyond the border zones. We have incorporated these requirements into this interim final rule. In accordance with section 350(a)(2), at least 50 percent of these compliance reviews will be conducted onsite, including any compliance review conducted on a Mexico-domiciled carrier with four or more commercial vehicles that did not undergo an on-site safety audit before receiving provisional authority.

This rule also addresses the section 350(a)(5) requirement that any Mexico-domiciled vehicle operated in the United States beyond the border zones receive a Level 1 inspection if it does not display a valid CVSA inspection decal, unless the carrier has held permanent authority for at least three consecutive years. In order to reduce the burden on State and Federal inspection officials, at least during the 18-month provisional operating period covered by this rule, we will require all commercial vehicles operated by Mexico-domiciled long-haul carriers to display a valid CVSA inspection decal when entering the United States.

Vehicle Size and Weight Issues

In response to the Senators' concern about oversize and overweight vehicles, section 350(a)(7)(A) of the DOT Appropriations Act requires FMCSA to:

(1) Equip all United States-Mexico commercial border crossings with scales suitable for enforcement action;

(2) Equip five of the ten highest volume commercial vehicle traffic crossings with weigh-in-motion systems before reviewing or processing applications by Mexico-domiciled carriers to operate beyond the border zones;

(3) Equip the remaining five of the ten highest volume crossings with weigh-in-motion systems within 12 months; and

(4) Require inspectors to verify the weight of each Mexico-domiciled carrier's commercial vehicle entering the United States at each weigh-in-motion equipped high volume border crossing.

The FMCSA will comply with these requirements and work with the Federal Highway Administration and States to assure the effective use of the weigh-in-motion equipment as part of an effective enforcement program. Enforcement of size and weight requirements is a State function, under the oversight of the Federal Highway Administration.

Driver Hours-of-Service

In response to the Senators' comments regarding Mexican hours-of-service laws (also discussed by Public Citizen), we note that the use of the record of duty status, commonly known as a logbook, is the tool the FMCSA uses for enforcing compliance with U.S. hours-of-service requirements. Upon entering the United States, each driver must either: (a) Have in his/her possession a record of duty status current on the day of the examination showing the total hours worked for the prior seven consecutive days, including time spent outside the United States; or, (b) demonstrate that he/she is operating as a ''100 air-mile (161 air-kilometer) radius driver'' under § 395.1(e).

In addition, section 350(a)(9) of the DOT Appropriations Act requires Mexico-domiciled carriers to only enter the United States at commercial border crossings: (1) Where and when a certified motor carrier safety inspector is on duty; and (2) where adequate capacity exists to conduct a sufficient number of meaningful vehicle safety inspections and to accommodate vehicles placed out-of-service as a result of these meaningful safety inspections. The examination of drivers resulting from the section 350(a)(9) vehicle inspection requirements would allow inspection of each Mexico-domiciled carrier's drivers upon entry and would allow certified motor carrier safety inspectors to review the driver's logbooks and discover whether hours-of-service violations have occurred.

Similarity of Regulatory Treatment

In response to the comments of the Mexican trade associations, FMCSA believes the regulatory requirements imposed in this rule are within the standards set out in the NAFTA Arbitral Panel Report, a copy of which is in the docket. The Panel noted that:

(1) The United States is not required to treat applications from Mexico-domiciled trucking firms in exactly the same manner as applications from U.S. or Canadian firms, as long as they are reviewed on a case by case basis; and

(2) Given the different enforcement mechanisms in place in the United States and Mexico, it may not be unreasonable for the United States to address legitimate safety concerns. Similarly, the Panel found it might be reasonable for the United States to implement different procedures with respect to service providers from another NAFTA country if necessary to ensure compliance with its own local standards by these service providers. Although CANACAR believes Mexican trucks are safer based on out-of-service rates for U.S. and Mexican drayage companies, the fact remains that Mexico's motor carrier safety regulatory system lacks several of the components that are central to the U.S. system. As the Panel found, the United States is responsible for the safe operation of motor carriers within U.S. territory, regardless of the carriers' country of origin, and FMCSA believes we must ensure each carrier is safe to protect U.S. highway users. This rule, in conjunction with the other rules pertaining to Mexican motor carriers published elsewhere in today's **Federal Register**, will provide FMCSA with the necessary level of assurance, in a manner consistent with the Panel's findings, that Mexican motor carriers seeking U.S. operating authority are capable of complying with the U.S. safety regulatory regime.

ABA, AHAS, and other commenters cite language from the NAFTA Arbitral Panel's Final Report to support their comments favoring more stringent safety measures with regard to Mexico-domiciled carriers. The Panel stated, among other things, that to the extent that Mexican licensing and inspection requirements may differ from U.S. requirements, the United States might be justified in using methods to ensure Mexico-domiciled carrier compliance with the U.S. regulatory regime that differ from those used for U.S. and Canadian carriers, provided that those methods are used in good faith to address legitimate safety concerns and fully conform with all relevant NAFTA provisions. FMCSA believes that the more stringent measures in the rules published today fulfill its statutory obligation to ensure the safe operation of motor carriers in the United States in a manner that is consistent with the Panel's construction of NAFTA.

Reciprocal Treatment

ABA urged us not to publish final rules permitting Mexico-domiciled carriers to operate beyond the border zones until the government of Mexico guarantees that U.S. carriers operating in Mexico will receive the same regulatory treatment afforded to Mexican carriers operating in that country. These regulations are intended to establish procedures to ensure that Mexico-domiciled carriers operate safely while traveling in the United States, not to police compliance with the terms of NAFTA. The NAFTA contains specific procedures designed to resolve disputes over whether the parties are fulfilling their obligations under the agreement.

Mexican-Owned, U.S.-Domiciled Motor Carriers

In response to comments by ABA, ATU, and Greyhound urging us to subject Mexican-owned, U.S.-domiciled passenger carriers to the same procedures applicable to Mexican-owned, Mexico-domiciled passenger carriers, we note that President Bush, in June 2001, issued a Memorandum that, among other things, allows a Mexican citizen to establish a U.S.-based passenger carrier to provide point-to-point transportation within the United States under the same procedures applicable to U.S.-owned, U.S.-domiciled passenger carriers. Mexican nationals may establish a passenger carrier operation in the United States by either purchasing an existing motor carrier or establishing a new motor carrier. Such carriers, as Greyhound itself points out, must use U.S. citizens or resident aliens to provide passenger service in the United States. The drivers they employ must possess a Commercial Drivers License issued in the United States. In addition, these carriers are subject to the same safety requirements, inspection procedures, enforcement mechanisms, and fines and out-of-service orders that apply to any other U.S. carrier. Thus, there is no basis to treat these carriers any differently from U.S.-owned, U.S.-domiciled carriers based solely on the owner's nationality. All U.S.-domiciled carriers, regardless of the owner's nationality, will be subject to an interim final rule establishing application procedures and safety monitoring requirements for new entrant carriers, which we expect to publish in the near future.

Small Passenger Carrying Vehicle Operations

With respect to the small passenger carrying vehicle issues raised by the ABA, the FMCSA published a Notice of Proposed Rulemaking on January 11, 2001 (66 FR 2767) that proposed to apply most of the FMCSRs (except for CDL and drug and alcohol testing requirements) to certain passenger carriers operating vehicles designed or used to transport between 9 and 15 passengers. The FMCSA's final small passenger carrying vehicle rule, which will be published in the near future, will address the safety issues regarding this type of operation.

Environmental Issues

Friends of the Earth, the Natural Resources Defense Council, the Sierra Club and The Center for International Law commented that FMCSA is required to perform additional analysis to meet the requirements of the National Environmental Policy Act (NEPA) and Executive Order 13045, concerning the protection of children from environmental health and safety risks. FMCSA is preparing an agency order to meet the requirements of DOT Order 5610.1C (that establishes the Department of Transportation's policy for compliance with NEPA by the Department's administrations). FMCSA has conducted a programmatic environmental assessment (PEA) of the three NAFTA-related rulemakings in accordance with the DOT Order and the regulations of the Council on Environmental Quality. A discussion of the PEA and its findings is presented later in the preamble under ''Regulatory Analyses and Notices.'' A copy of the PEA is in the docket to this rulemaking. Executive Order 13045 is addressed in the Regulatory Analyses and Notices section of this preamble.

We have reviewed our obligations under the CAA, and believe that we are in compliance with the general conformity requirements as implemented by the U.S. Environmental Protection Agency (EPA). EPA's implementing regulations exempt certain actions from the general conformity determination requirements. Actions which would result in no increase in emissions or clearly a de minimis increase, such as rulemaking (40 CFR 93.153(c)(iii)), are exempt from requiring a conformity determination. In addition, actions which do not exceed certain threshold emissions rates set forth in 40 CFR 93.153(b) are also exempt from the conformity determination requirements. The FMCSA rulemakings meet both of these exemption standards. First, as noted elsewhere in this preamble to this rule, the actions being taken by the FMCSA are rulemaking actions to improve FMCSA's regulatory oversight, not an action to modify the moratorium and allow Mexican trucks to operate beyond the border. Second, the air quality impacts from each of the FMCSA's rules neither individually nor collectively exceed the threshold emissions rates established by EPA (see Appendix C of the Environmental Assessment accompanying these rulemakings for a more detailed discussion of air quality impacts). As a result, we believe that FMCSA's rulemaking actions comply with the CAA requirements, and that no conformity determination is required.

Penalties

We believe Public Citizen did not understand the full range of penalties available to FMCSA when it made its comments that the penalties for Mexico-domiciled carriers under the safety monitoring program would be weaker than those that currently apply to U.S.-domiciled carriers. In addition to the procedures established by this rule, Mexico-domiciled carriers are fully subject to the full range of enforcement actions and sanctions faced by U.S. and Canadian carriers, including civil and criminal fines and jail time.

Expedited Action Criteria

Although violations of the hours-of-service limits are not specifically included in the list of violations prompting an expedited safety or compliance review or demand for corrective action, hours-of-service violations will be taken into account as part of a carrier's out-of-service rate, which is a triggering factor for expedited action under § 385.105(a)(7).

Although a fatal accident is not included on the list of violations that

would trigger an expedited safety audit or compliance review or a demand for corrective action, Mexico-domiciled motor carriers will be subject to existing FMCSA policy regarding crashes. Under this policy, FMCSA conducts a basic Crash Inquiry on any motor carrier having a crash involving two or more fatalities, two or more injuries, or a combination of fatalities and injuries. This review policy also includes any crash that may result in the agency acquiring detailed knowledge that would be beneficial for any unusual post-crash public interest. The Crash Inquiry would include crashes involving motor coaches, unqualified drivers, explosions, and substantial fire.

FMCSA policy automatically expands the basic Crash Inquiry into a full compliance review as soon as practicable when the motor carrier is not in good standing with FMCSA. A motor carrier is not in good standing with FMCSA when it is does not have a safety rating (which would generally be the case for new entrant Mexico-domiciled carriers prior to the performance of a compliance review), the safety rating is less than satisfactory, or the carrier is on FMCSA's Safety Status Measurement System (SafeStat) with a SafeStat category of A, B, C, or D. For more information about SafeStat, see the FMCSA web page at: *http://www.fmcsa.dot.gov/factsfigs/safetstat.htm.*

The Mexico-domiciled motor carrier's application will create a new record attached to its new USDOT identification number without any safety rating attached to it. The lack of a safety rating for a Mexico-domiciled motor carrier coupled with a multiple fatality or injury crash will result in the Mexico-domiciled motor carrier being subject to a full compliance review as soon as practicable. This procedure is identical to the current treatment of new entrant U.S.-or Canada-domiciled motor carriers lacking a safety rating.

Procedural Time Limits

In response to Public Citizen's concern that the rule did not propose specific time limits for carriers to address identified problems and respond to letters demanding corrective action, we have added a provision that failure to respond within 30 days will result in the suspension of the carrier's provisional registration. Public Citizen also raised a question concerning the status of an uninsured carrier operating while the agency performs a safety review or processes a demand for corrective action. FMCSA has authority, under 49 CFR 387.31(g), to deny entry to any Mexico-domiciled carrier not carrying the required evidence of financial responsibility in its vehicles. The agency also has authority, under 49 U.S.C. 14702, to obtain a court order enjoining a carrier from operating without insurance independent of the safety monitoring process. Finally, Mexico-domiciled carriers operating beyond the border zones will be required to file evidence of insurance with FMCSA as a condition for retaining their provisional operating authority. As is the case for U.S. and Canada-domiciled carriers, failure to have a current insurance filing will result in revocation of authority under existing FMCSA procedures.

Public Citizen's concerns about the timeliness of an expedited safety review are valid. The agency will strive to conduct the review as soon as possible and will give priority in assigning resources to conduct these reviews. We believe § 385.111 of the final rule adequately addresses Public Citizen's concerns about the length of time a carrier can be suspended without taking corrective action before its registration is revoked. An agency suspension of any carrier's authority to operate means the carrier cannot operate legally until it corrects its deficiencies and has received written notice from FMCSA allowing it to resume operating. The suspension order will provide for revocation of the provisional registration if necessary corrective action is not taken within 30 days.

The violations requiring expedited action are warning signs that a carrier may not have the necessary basic safety management controls in place, thus generating an immediate response in the form of a corrective action demand letter, safety audit or compliance review. FMCSA will take these violations seriously, but they do not necessarily establish that the carrier is unfit to operate. If the carrier demonstrates that it has taken steps to correct the identified problems and that it is otherwise exercising the necessary basic safety management controls, it does not present a danger to public safety and should be allowed to continue to operate.

FMCSA is developing a database that will indicate whether a carrier has had its authority suspended or revoked. Unregistered carriers and carriers whose registration has been suspended or revoked will be denied entry into the United States. Use of this data will also help to ensure that enforcement personnel can place out-of-service at the roadside those carriers that continue to operate commercial motor vehicles within the United States after registration has been suspended or revoked.

Compliance With Federal Motor Vehicle Safety Standards (FMVSS)

FMCSA and its State partners will continue to enforce the FMVSS through roadside inspections, including inspections at the border. Roadside inspections provide a means of ensuring that vehicles meet the applicable FMVSS in effect on the date the vehicle was manufactured.

Part 393 of the FMCSRs currently includes cross-references to most of the FMVSS applicable to heavy trucks and buses. The rules require that motor carriers operating in the United States, including Mexico-domiciled carriers, must maintain the specified safety equipment and features that the National Highway Traffic Safety Administration (NHTSA) requires vehicle manufacturers to install. Failure to maintain these safety devices or features is a violation of the FMCSRs. If the violations are discovered during a roadside inspection, and they are serious enough to meet the current out-of-service criteria used in roadside inspections (i.e., the condition of the vehicle is likely to cause an accident or a mechanical breakdown), the vehicle would be placed out of service until the necessary repairs are made. Any FMVSS violations that involve noncompliance with the standards presently incorporated into part 393 could subject motor carriers to a maximum civil penalty of $10,000 per violation. If FMCSA determines that Mexico-domiciled carriers are operating vehicles that do not comply with the applicable FMVSS, we could also take appropriate enforcement action for making a false certification on Form OP–1(MX) or OP–2.

To further strengthen FMVSS enforcement, FMCSA and NHTSA are initiating several regulatory actions in today's **Federal Register** to ensure that all commercial vehicles operated in the United States, including those operated by Mexican and Canadian carriers, display a NHTSA-required label certifying compliance with the FMVSS. FMCSA is publishing a Notice of Proposed Rulemaking proposing to incorporate the labeling requirement into part 393 and NHTSA is publishing two NPRMs and one policy statement relating to the certification label.

Many commercial motor vehicles owned by Mexican and Canadian carriers may comply with the FMVSSs in effect at the time of their manufacture. However, because these vehicles were not originally manufactured for use in the United

States, they are not likely to have FMVSS certification labels. The NHTSA policy statement permits a vehicle manufacturer to retroactively apply a label to a commercial motor vehicle certifying, if it has sufficient basis for doing so, that the vehicle complied with all applicable FMVSS in effect at the time it was originally manufactured. In connection with this policy statement, NHTSA is proposing recordkeeping requirements for foreign manufacturers that choose to retroactively certify vehicles.

In the third NHTSA document published in today's **Federal Register**, NHTSA is proposing to codify, in 49 CFR part 591, its longstanding interpretation of the term ''import'' as including bringing commercial vehicles into the United States for the purpose of transporting cargo or passengers.

Staffing Issues

Several parties expressed concern about whether there are adequate resources available to conduct the necessary inspections and safety reviews. Section 350(a)(9) of the Act prohibits Mexico-domiciled motor carriers from entering the United States at any border crossing where a certified motor carrier inspector is not on duty or where there is not adequate capacity to conduct either a sufficient number of meaningful vehicle safety inspections or accommodate vehicles placed out-of-service as a result of safety inspections. Congress has appropriated $57.8 million for FMCSA to handle its responsibilities in connection with implementing the NAFTA access provisions for Mexico-domiciled carriers. FMCSA intends to hire over 200 people for this purpose, most of whom will be conducting vehicle inspections, pre-authorization safety audits and 18-month safety audits. We believe this significant augmentation of our existing staff at the southern border will enable us to fully comply with our safety monitoring responsibilities.

Responses to Other Comments

The individuals who submitted form comments provided by CRASH did not elaborate on what they considered to be ''meaningful safety standards and significantly increased compliance oversight.'' We have addressed those concerns in this and the companion rulemakings published elsewhere in today's **Federal Register**.

We recognize the concerns of the Green Valley, Arizona residents along Interstate 19, but any increase in traffic along this route will not result from the implementation of this rule and its two companion rules. These rules do not open the border to Mexico-domiciled trucks, they impose safety certification and monitoring requirements on Mexico-domiciled motor carriers operating in the United States under the provisions of NAFTA.

In response to Mr. Pizenche's comments, 49 CFR 390.21 currently requires that all motor vehicles, including foreign vehicles, must have the carrier's name and USDOT number on each side of the power unit, and must be readable from 50 feet. In addition, our companion rule establishing application requirements for Mexico-domiciled long-haul carriers published elsewhere in today's **Federal Register**, requires that FMCSA issue a new USDOT identification number to each Mexico-domiciled motor carrier applicant intending to operate beyond the United States-Mexico border zones. This new USDOT identification number will have a suffix that will denote the type of authority held by the Mexico-domiciled motor carrier and allow FMCSA to monitor the carrier's performance by inspecting crash and roadside inspection reports.

Section-by-Section Summary

We have changed the section numbers as they appeared in the NPRM. The sections are now numbered 385.101 through 385.119.

Section 385.101

This section contains the definitions of terms used in new subpart B. These include:

(1) Provisional certificate of registration, the registration issued to Mexico-domiciled border zone carriers;

(2) Provisional operating authority, the registration issued to Mexico-domiciled long-haul carriers; and

(3) Safety audit, the review conducted by FMCSA on a border zone carrier during the 18-month provisional period to determine whether the carrier exercises basic safety management controls. Because we will be conducting compliance reviews on Mexico-domiciled long-haul carriers during the 18-month provisional period, we have also added a reference to the existing definition of compliance review in § 385.3.

Section 385.103

This section describes the elements of the safety monitoring system, which include roadside monitoring, safety audits for border zone carriers and compliance reviews for long-haul carriers. FMCSA has added a requirement that all Mexico-domiciled motor vehicles operating beyond the border zones display a valid CVSA inspection decal throughout the 18-month provisional operating authority period. A CVSA inspection is only valid for three months from the date of inspection. Consequently, Mexico-domiciled long-haul carriers will need to get a CVSA inspection for their vehicles every three months. FMCSA will work with CVSA to ensure that this requirement is operational when the President lifts the moratorium on granting operating authority to Mexico-domiciled motor carriers.

Section 385.105

Section 385.105(a) lists the serious violations or infractions that will result in an expedited safety audit or compliance review or, in the alternative, a demand that the carrier demonstrate in writing that it has taken immediate corrective action. The infractions listed are essentially identical to those proposed in the NPRM. We have added clarifying language regarding what constitutes a valid Licencia Federal. The type of action taken by FMCSA in response to the violations will depend upon the specific circumstances of the violations.

Sections 385.105(b) provides that failure to respond to a request for a written response demonstrating corrective action within 30 days will result in suspension of provisional registration until the required showing of corrective action is made.

Section 385.105(c) clarifies that a carrier that successfully responds to a demand for corrective action still must undergo a safety audit or compliance review during the provisional period if it has not already done so.

Section 385.107

This section describes the safety audit and what follow-up action will be taken by the agency. Safety audits on Mexico-domiciled carriers operating only in the border zones under provisional Certificates of Registration will be conducted by an FMCSA safety specialist, usually onsite, although FMCSA reserves the right to conduct the audit at an alternate site. The safety audit will assess the adequacy of the carrier's basic safety management controls in accordance with the criteria established in new Appendix A. Appendix A does not specifically reference Mexico-domiciled motor carriers because we are considering adopting it eventually for all new entrants, except for Mexico-domiciled long-haul carriers, who must undergo compliance reviews.

The audit will consist of a review of the Mexico-domiciled carrier's safety data, a review of requested motor carrier

documents, and an interview session with the Mexico-domiciled carrier by the FMCSA safety specialist. The objective of the safety audit is both to educate the carrier on compliance with the FMCSRs and HMRs and to determine areas where the carrier might be deficient in terms of compliance. Areas covered include: financial responsibility; commercial driver's license standards; qualification of drivers; controlled substances and alcohol use and testing; transporting and marking hazardous materials; requirements applicable to driving a motor vehicle; hours of service; and vehicle inspection, repair, and maintenance. A safety audit is different than a compliance review in that it focuses on providing safety management and technical assistance and is not intended to result in a safety fitness determination. However, if the audit demonstrates that the carrier fails to establish and/or exercise basic safety management controls, FMCSA will ensure that the necessary corrective action is taken or else the carrier will not be allowed to continue operating in the United States.

FMCSA Division Administrators or State Directors will make the initial determination about the adequacy of a Mexico-domiciled carrier's basic safety management controls and whether necessary corrective action has been taken.

If the safety audit demonstrates that the carrier is exercising the necessary basic safety management controls, the carrier will retain its provisional status and will continue to be closely monitored until the expiration of the 18-month safety monitoring period. At that time, the provisional designation will be removed from its registration, provided its safety record remains in good standing.

FMCSA anticipates that the basic safety management practices of the large majority of Mexico-domiciled carriers will prove to be adequate based on the combined effect of:

(1) Providing educational material to the carrier in the application process;

(2) Requiring the carrier to certify how it will comply with the FMCSRs;

(3) Requiring long-haul carriers to successfully complete a pre-authority safety audit; and

(4) Providing notice to the carrier of what items will be covered in the safety audit or compliance review conducted during the provisional registration period.

If the safety audit reveals that the Mexico-domiciled carrier's basic safety management practices are inadequate, FMCSA will initiate a suspension and revocation proceeding. The carrier will be required to remedy the deficiencies or else its provisional Certificate of Registration will be revoked.

Section 385.109

Section 350(a)(2) of the Act requires the compliance review of Mexico-domiciled long-haul operations to be conducted consistent with our existing safety fitness evaluation procedures in part 385 and that the carrier receive a Satisfactory safety rating before receiving permanent operating authority. Therefore, an FMCSA safety specialist will conduct compliance reviews of Mexico-domiciled long-haul carriers applying the evaluation criteria in Appendix B to part 385, the same criteria now in use for U.S and Canadian carriers. These criteria provide for the assignment of one of three proposed safety ratings upon completion of a compliance review: Satisfactory, Conditional, or Unsatisfactory.

A carrier receiving a Satisfactory rating will continue to operate under provisional status until the expiration of the 18-month safety monitoring period. At that time, the provisional designation will be removed from its registration, provided its safety record remains in good standing.

The consequences of an Unsatisfactory rating are similar to those attached to a safety audit in which it is determined that a carrier does not have adequate safety management controls. The carrier's provisional operating authority will be suspended and the FMCSA will notify the carrier that it is required to take action to improve its practices. Failure to make the necessary changes to remedy inadequate basic safety management controls will result in revocation of a carrier's provisional operating authority.

A Conditional rating is indicative of deficiencies in a carrier's safety management controls which raise concerns about its ability to operate safely but are not of sufficient magnitude to declare the carrier unfit. Because the Act requires Mexico-domiciled long-haul carriers to achieve a Satisfactory rating in order to retain their provisional operating authority, a revocation proceeding will be initiated following the assignment of a Conditional rating. However, because our existing safety rating procedures do not equate a conditional rating with unfitness and permit conditional-rated carriers to continue operating, provisional operating authority will not be suspended at the time a revocation proceeding is initiated.

Section 385.111

In response to comments, we have added procedures incorporating specific time frames for suspension and revocation of provisional operating authority and Certificates of Registration. These procedures are designed to balance the need to protect the public from potentially unsafe carriers while preserving the carrier's due process rights.

Mexico-domiciled carriers will have 10 days following notification of an Unsatisfactory rating or an unsuccessful safety audit to demonstrate that the FMCSA committed material error. If they fail to do so, the FMCSA will suspend the carrier's provisional operating authority or provisional Certificate of Registration on the 15th day, thus placing it out of service. If the carrier fails to demonstrate that it has taken necessary corrective action within 30 days from the date of suspension, FMCSA will revoke the carrier's provisional operating authority or provisional Certificate of Registration.

Carriers assigned a Conditional rating will not have their provisional operating authority suspended, but will still need to demonstrate that necessary corrective action has been taken to prevent their authority from being revoked.

Section 385.111(e) provides for suspension of provisional registration when the carrier does not provide documents necessary for the completion of a safety audit or compliance review or does not submit sufficient evidence of corrective action in response to a written demand under § 385.105. The suspension will remain in effect until the necessary documents are produced and the carrier:

(1) Successfully completes the safety audit;

(2) Receives a Satisfactory or Conditional safety rating; or

(3) Demonstrates that it has taken the necessary corrective action in response to a § 385.105 demand. Although the assignment of a Conditional rating will be sufficient to lift the suspension, the carrier will still need to upgrade its rating to Satisfactory in order to keep its provisional operating authority.

Section 385.111(f) is intended to address the problem of recidivism, i.e., carriers who, after taking corrective action resulting in the lifting of a suspension during the provisional operating or registration period, commit one of the serious safety infractions listed in § 385.105(a). In these circumstances, the suspension will be automatically reinstated and the carrier's provisional operating authority or Certificate of Registration will be

revoked unless it demonstrates it did not commit the infraction.

In a similar vein, § 385.111(g) provides for the initiation of a revocation proceeding upon receipt of credible evidence that a carrier operated in violation of a suspension order, even if that suspension order was eventually lifted. A Mexico-domiciled motor carrier that operates a commercial motor vehicle in violation of a suspension or out-of-service order will also be subject to the penalties provided in 49 U.S.C. 521(b)(2)(A), not to exceed $10,000 for each offense.

Section 385.113

Under this section, a Mexico-domiciled carrier may request FMCSA to conduct an administrative review if it believes the agency has committed an error in assigning a safety rating or determining that its basic safety management controls are inadequate. The carrier's request must explain the error it believes FMCSA committed and include a list of all factual and procedural issues in dispute. In addition, the carrier must include any information or documents that support its argument. Following the administrative review, which will be conducted by the FMCSA's Associate Administrator for Enforcement, the agency will notify the carrier of its decision, which will constitute the final action of the agency. Administrative review under this section will be completed in no more than 10 days after the request is received.

Section 385.115

This section prohibits a Mexico-domiciled carrier whose registration has been revoked from reapplying for provisional operating authority or a Certificate of Registration for at least 30 days after the date of revocation. A Mexico-domiciled carrier reapplying for provisional registration will have to demonstrate to FMCSA's satisfaction that it has corrected the deficiencies that resulted in revocation of its registration and that it otherwise has effectively functioning basic safety management systems in place. Long-haul carriers will again be required to undergo a pre-authorization safety audit. FMCSA is obtaining information regarding revocations by inserting appropriate questions on the application forms developed in the companion rules amending parts 365 and 368 published elsewhere in today's **Federal Register**.

Section 385.117

This section provides that at the end of the 18-month period, the Mexico-domiciled carrier will receive permanent DOT operating authority or a Certificate of Registration if it has successfully met the requirements of the most recent safety audit or has received a Satisfactory rating, and is not currently under a notice from FMCSA to remedy its basic safety management practices. Thereafter, it will be treated like any other non-new-entrant motor carrier. If the Mexico-domiciled carrier is under a notice to remedy its basic safety management practices, its provisional designation will continue until FMCSA determines the carrier is complying with the Federal safety regulations or revokes its registration under § 385.111.

If a compliance review or safety audit has not been conducted on a Mexico-domiciled carrier within the 18-month oversight period, the provisional designation will continue until such time as FMCSA completes and evaluates a review or audit.

Compliance reviews and safety audits will normally begin within 90 to 120 days after the grant of provisional operating authority or a provisional Certificate of Registration, so that sufficient records will be available to review. FMCSA will work to ensure that all Mexico-domiciled carriers will be scheduled for an audit or compliance review within the 18-month period.

Section 385.119

This section clarifies that although FMCSA's NAFTA implementation rules will include a pre-authorization safety audit for long-haul Mexico-domiciled carriers and at least one post-operational compliance review or safety audit, this is not the exclusive safety oversight that FMCSA will apply to Mexico-domiciled carriers. FMCSA will also apply the full range of oversight and enforcement actions currently applicable to all non-new-entrant motor carriers, including civil penalties and the suspension and revocation of registration or operating authority due to persistent violations of DOT regulations governing motor carrier operations in interstate commerce.

Appendix A to Part 385

Appendix A is being added to inform Mexico-domiciled motor carriers what the evaluation criteria will be that FMCSA will use during a safety audit to rate a carrier's compliance with the FMCSRs and applicable HMRs, assess its operational safety, and assess its basic management safety management controls. The safety audit evaluation criteria are similar to the current safety rating methodology. The safety audit evaluation criteria looks at the same list of critical and acute violations as in the safety rating methodology and both use the same six factors: (1) *General:* Parts 387 and 390; (2) *Driver:* Parts 382, 383, and 391; (3) *Operational:* Parts 392 and 395; (4) *Vehicle:* Parts 393, 396, and inspection data for the last 12 months; (5) *Hazardous Materials:* Parts 171, 177, 180 and 397; and (6) Recordable Accident Rate per Million Miles. All Mexico-domiciled motor carriers who have a provisional Certificate of Registration will receive a safety audit. These carrier's safety audits will be subject to the safety audit evaluation criteria in Appendix A to part 385. All Mexico-domiciled motor carriers who receive a compliance review will be subject to the safety rating methodology detailed in Appendix B to part 385.

The safety audit evaluation criteria are based on 49 CFR 385.5 (Safety fitness standard) and § 385.7 (Factors to be considered in determining a safety rating). The FMCSA will use the evaluation process to ensure that Mexico-domiciled motor carriers have basic safety management controls in place. The evaluation process will also enable the FMCSA to focus its limited resources on examining the operations of carriers needing improvement in their compliance with the FMCSRs and the applicable HMRs.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866, and is significant within the meaning of Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979) because of public interest. It has been reviewed by the Office of Management and Budget. However, it is anticipated that the economic impact of the revisions in this rulemaking will be minimal.

Nevertheless, the subject of safe operations by Mexico-domiciled carriers in the United States will likely generate considerable public interest within the meaning of Executive Order 12866. The manner in which FMCSA carries out its safety oversight responsibilities with respect to this cross-border motor carrier transportation may be of substantial interest to the domestic motor carrier industry, the Congress, and the public at large.

The Regulatory Evaluation analyzes the costs and benefits of this rule and the two companion NAFTA-related rules published elsewhere in today's **Federal Register**. Because these rules are so closely interrelated, we did not

attempt to prepare separate analyses for each rule.

The evaluation estimated costs and benefits based on three different scenarios, with a high, low and medium number of Mexico-domiciled carriers assumed covered by the rules. The costs of these rules are minimal under all three scenarios. Over 10 years, the costs range from $53 million for the low scenario to approximately $76 million for the high scenario. Forty percent of these costs are borne by the FMCSA, while the remaining costs are paid by Mexico-domiciled carriers. The largest costs are those associated with conducting pre-authorization safety audits, safety audits within 18 months of a carrier's receiving provisional Certificate of Registration, compliance reviews within 18 months of a carrier's receiving provisional operating authority, and the loss of a carrier's ability to operate in the United States.

The FMCSA used the cost effectiveness approach to determine the benefits of these rules. This approach involves estimating the number of crashes that would have to be deterred in order for the proposals to be cost effective. Over ten years, the low scenario would have to deter 640 forecast crashes to be cost beneficial, the medium scenario would have to deter 838, and the high scenario would have to deter 929. While the overall number of crashes to be avoided under the medium and high scenario is fairly high, the number falls rapidly over the 10-year analysis period and beyond. The tenth year deterrence rate is one-quarter to one-sixth the size of the first year's rate.

A copy of the Regulatory Evaluation is in the docket for this rulemaking.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)(Pub. L. 96–354, 5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement and Fairness Act (Pub. L. 104–121), requires Federal agencies to analyze the impact of rulemakings on small entities, unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The United States did not have in place a special system to ensure the safety of Mexico-domiciled carriers operating in the United States. Mexico-domiciled carriers will be subject to all the same safety regulations as domestic carriers. However, FMCSA's enforcement of the FMCSRs has become increasingly data dependent in the last several years. Several programs have been put in place to continually analyze crash rates, out-of-service (OOS) rates, compliance review records, and other data sources to allow the agency to focus on high-risk carriers. This strategy is only effective if FMCSA has adequate data on carriers' size, operations, and history. Thus, a key component of FMCSA's three companion NAFTA-related rules is the requirement that Mexico-domiciled carriers operating in the United States complete a Form MCS–150 -Motor Carrier Identification Report, and update the information submitted in the appropriate application form (OP–1(MX) or OP–2) when key information changes. This will allow FMCSA to better monitor these carriers and to quickly determine whether their safety or OOS record changes.

The more stringent oversight procedures will also allow FMCSA to respond more quickly when safety problems emerge. The safety audits, compliance reviews and CVSA inspections will provide FMCSA with more detailed information about Mexico-domiciled carriers, and allow FMCSA to act appropriately upon discovering safety problems.

The objective of these rules is to enhance the safety of Mexico-domiciled carriers operating in the United States. The rules describe what additional information Mexico-domiciled carriers will have to submit, and outline the procedure for dealing with possible safety problems.

The safety monitoring system, combined with the safety certifications and other information to be submitted in the OP–1(MX) and OP–2 applications and the pre-authorization safety audit of Mexico-domiciled carriers seeking to operate beyond the border zones, are a means of ensuring that:

(1) Mexico-domiciled applicants are sufficiently knowledgeable about safety requirements before commencing operations (a prerequisite to being able to comply);

(2) Mexico-domiciled applicants conduct operations in the United States in accordance with their application certifications and the conditions of their registrations; and

(3) The safety performance of Mexico-domiciled applicants is at least equal to that of United States and Canadian carriers operating in the United States.

These rules will primarily affect Mexico-domiciled small motor carriers who wish to operate in the United States. The amount of information these carriers will have to supply to FMCSA has been increased, and we estimate that they will spend two additional hours gathering data for the OP–1(MX) and OP–2 application forms. Mexico-domiciled carriers will also have to undergo safety audits, an increased number of CVSA roadside inspections and compliance reviews, if they operate beyond the border zones. We presented three growth scenarios in the regulatory evaluation: a high option, with 11,787 Mexico-domiciled carriers in the baseline; a medium scenario, with 9,500 Mexico-domiciled carriers in the baseline; and a low scenario, with 4,500 Mexico-domiciled carriers in the baseline. Under all three options, the FMCSA believes that the number of applicants will match approximately that observed in the last few years before this publication date, approximately 1,365 applicants per year.

A review of the Motor Carrier Management Information System (MCMIS) census file reveals that the vast majority of Mexico-domiciled carriers are small, with 75 percent having three or fewer vehicles. Carriers at the 95th percentile carrier had only 15 trucks or buses.

These rules should not have any impact on small United States based motor carriers.

FMCSA did not establish any different requirements or timetables for small entities. As noted above, we do not believe these requirements are onerous. Most covered carriers will be required to spend two extra hours to complete the relevant forms, undergo at least one safety audit at four hours each, have their trucks inspected more frequently and, if they obtain long-haul authority, undergo a compliance review taking six hours. This part 385 interim final rule would not achieve its purposes if small entities were exempt. In order to ensure the safety of Mexico-domiciled carriers, the rule must have a consistent procedure for addressing safety problems. Exempting small motor carriers (which, as was noted above, are the vast majority or Mexico-domiciled carriers who would operate in the United States) would defeat the purpose of these rules.

FMCSA did not consolidate or simplify the compliance and reporting requirements for small carriers. Small United States carriers already have to comply with the paperwork requirements in part 365. There is no evidence that domestic carriers find these provisions confusing or particularly burdensome. Apropos the part 385 provisions, FMCSA believes the requirements are fairly straightforward, and it would not be possible to simplify them. A simplification of any substance would make the rule ineffectual. Given the compelling interest in assuring the safety of Mexico-domiciled carriers

operating in the United States, and the fact that the majority of these carriers are small entities, no special changes were made.

The part 385 requirements include performance standards. A Mexico-domiciled carrier will need to complete a safety improvement plan if its performance demonstrates that it is not operating safely, either through a high OOS rate or other problems.

Therefore, FMCSA certifies that this rule will not have a significant impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; 2 U.S.C. 1532) requires each agency to assess the effects of its regulatory actions on State, local, and tribal governments and the private sector. Any agency promulgating a final rule likely to result in a Federal mandate requiring expenditures by a State, local, or tribal government or by the private sector of $100 million or more in any one year must prepare a written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. FMCSA has determined that the changes proposed in this rulemaking would not have an impact of $100 million or more in any one year.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in Sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (April 23, 1997, 62 FR 19885), requires that agencies issuing ''economically significant'' rules that also concern an environmental health or safety risk that an agency has reason to believe may disproportionately affect children must include an evaluation of the environmental health and safety effects of the regulation on children. Section 5 of Executive Order 13045 directs an agency to submit for a ''covered regulatory action'' an evaluation of its environmental health or safety effects on children. The agency has determined that this rule is not a ''covered regulatory action'' as defined under Executive Order 13045.

This rule is not economically significant under Executive Order 12866 because the FMCSA has determined that the changes in this rulemaking would not have an impact of $100 million or more in any one year. The costs range from $53 to $76 million over 10 years. This rule also does not concern an environmental health risk or safety risk that would disproportionately affect children. Mexico-domiciled motor carriers who intend to operate commercial motor vehicles anywhere in the United States must comply with current U.S. Environmental Protection Agency regulations and other United States environmental laws under this rule and others being published elsewhere in today's **Federal Register**. Nonetheless, the agency has conducted a programmatic environmental assessment as discussed later in this preamble.

Executive Order 12630 (Taking of Private Property)

This final rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999 (64 FR 43255, August 10, 1999). FMCSA has determined that this action would not have significant Federalism implications or limit the policymaking discretion of the States.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) [44 U.S.C. 3501–3520], Federal agencies must determine whether requirements contained in rulemakings are subject to information collection provisions of the PRA and, if they are, obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor or require through regulations. FMCSA has determined that this regulation does not constitute an information collection with the scope or meaning of the PRA.

FMCSA performs safety compliance assessments and enforcement activities as required by statutes and the FMCSRs. Implementation of this proposal would create no additional paperwork burden on Mexico-domiciled carriers that comply with the FMCSRs. Any safety data that FMCSA solicits from individual motor carriers regarding deficiency and/or non-compliance is not considered a collection of information because this type of response is required of such carriers as part of the usual and customary compliance and enforcement practice under the FMCSRs. Accordingly, FMCSA has determined that this action would not affect any requirements under the PRA.

National Environmental Policy Act

FMCSA is a new administration within the Department of Transportation (DOT). FMCSA is currently developing an agency order that will comply with all statutory and regulatory policies under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). FMCSA expects the draft Order to appear in the **Federal Register** for public comment in the near future. The framework of the FMCSA Order will be consistent with and reflect the procedures for considering environmental impacts under DOT Order 5610.1C. FMCSA has analyzed this rule under the NEPA and DOT Order 5610.1C, and has issued a Finding Of No Significant Impact (FONSI). The FONSI and the environmental assessment are in the docket to this rule.

FMCSA invites comments on the programmatic environmental assessment.

Executive Order 13211 (Energy Supply, Distribution, or Use)

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. This action is not a significant energy action within the meaning of section 4(b) of the Executive Order because as a procedural action it is not economically significant and will not have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 49 CFR Part 385

Administrative practice and procedure, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the FMCSA amends 49 CFR part 385 as set forth below:

PART 385—SAFETY FITNESS PROCEDURES

1. The authority citation for part 385 is revised to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5113, 13901–13905, 31136, 31144, 31148, and 31502; Section 350 of Public Law 107–87; and 49 CFR 1.73.

2. Sections 385.1 through 385.19 are designated as Subpart A-General, and a new Subpart B is added consisting of new §§ 385.101 through 385.119 to read as follows:

Subpart B—Safety Monitoring System for Mexico-Domiciled Carriers

Sec.

Subpart B—Safety Monitoring System for Mexico-Domiciled Carriers

§ 385.101 Definitions

Compliance Review means a compliance review as defined in § 385.3 of this part.

Provisional certificate of registration means the registration under § 368.6 of this subchapter that the FMCSA grants to a Mexico-domiciled motor carrier to provide interstate transportation of property within the United States solely within the municipalities along the United States-Mexico border and the commercial zones of such municipalities. It is provisional because it will be revoked if the registrant does not demonstrate that it is exercising basic safety management controls during the safety monitoring period established in this subpart.

Provisional operating authority means the registration under § 365.507 of this subchapter that the FMCSA grants to a Mexico-domiciled motor carrier to provide interstate transportation within the United States beyond the municipalities along the United States-Mexico border and the commercial zones of such municipalities. It is provisional because it will be revoked if the registrant is not assigned a Satisfactory safety rating following a compliance review conducted during the safety monitoring period established in this subpart.

Safety audit means an examination of a motor carrier's operations to provide educational and technical assistance on safety and the operational requirements of the FMCSRs and applicable HMRs and to gather critical safety data needed to make an assessment of the carrier's safety performance and basic safety management controls. Safety audits do not result in safety ratings.

§ 385.103 Safety monitoring system.

(a) *General.* Each Mexico-domiciled carrier operating in the United States will be subject to an oversight program to monitor its compliance with applicable Federal Motor Carrier Safety Regulations (FMCSRs), Federal Motor Vehicle Safety Standards (FMVSSs), and Hazardous Materials Regulations (HMRs).

(b) *Roadside monitoring.* Each Mexico-domiciled carrier that receives provisional operating authority or a provisional Certificate of Registration will be subject to intensified monitoring through frequent roadside inspections.

(c) *CVSA decal.* Each Mexico-domiciled carrier granted provisional operating authority under part 365 of this subchapter must have on every commercial motor vehicle it operates in the United States a current decal attesting to a satisfactory inspection by a Commercial Vehicle Safety Alliance (CVSA) inspector.

(d) *Safety audit.* The FMCSA will conduct a safety audit on a Mexico-domiciled carrier within 18 months after the FMCSA issues the carrier a provisional Certificate of Registration under part 368 of this subchapter.

(e) *Compliance review.* The FMCSA will conduct a compliance review on a Mexico-domiciled carrier within 18 months after the FMCSA issues the carrier provisional operating authority under part 365 of this subchapter.

§ 385.105 Expedited action.

(a) A Mexico-domiciled motor carrier committing any of the following violations identified through roadside inspections, or by any other means, may be subjected to an expedited safety audit or compliance review, or may be required to submit a written response demonstrating corrective action:

(1) Using drivers not possessing, or operating without, a valid Licencia Federal de Conductor. An invalid Licencia Federal de Conductor includes one that is falsified, revoked, expired, or missing a required endorsement.

(2) Operating vehicles that have been placed out of service for violations of the Commercial Vehicle Safety Alliance (CVSA) North American Standard Out-of-Service Criteria, without making the required repairs.

(3) Involvement in, due to carrier act or omission, a hazardous materials incident within the United States involving:

(i) A highway route controlled quantity of a Class 7 (radioactive) material as defined in § 173.403 of this title;

(ii) Any quantity of a Class 1, Division 1.1, 1.2, or 1.3 explosive as defined in § 173.50 of this title; or

(iii) Any quantity of a poison inhalation hazard Zone A or B material as defined in §§ 173.115, 173.132, or 173.133 of this title.

(4) Involvement in, due to carrier act or omission, two or more hazardous material incidents occurring within the United States and involving any hazardous material not listed in paragraph (a)(3) of this section and defined in chapter I of this title.

(5) Using a driver who tests positive for controlled substances or alcohol or who refuses to submit to required controlled substances or alcohol tests.

(6) Operating within the United States a motor vehicle that is not insured as required by part 387 of this chapter.

(7) Having a driver or vehicle out-of-service rate of 50 percent or more based upon at least three inspections occurring within a consecutive 90-day period.

(b) Failure to respond to an agency demand for a written response demonstrating corrective action within 30 days will result in the suspension of the carrier's provisional operating authority or provisional Certificate of Registration until the required showing of corrective action is submitted to the FMCSA.

(c) A satisfactory response to a written demand for corrective action does not excuse a carrier from the requirement that it undergo a safety audit or compliance review, as appropriate, during the provisional registration period.

§ 385.107 The safety audit.

(a) The criteria used in a safety audit to determine whether a Mexico-domiciled carrier exercises the necessary basic safety management controls are specified in Appendix A to this part.

(b) If the FMCSA determines, based on the safety audit, that the Mexico-domiciled carrier has adequate basic safety management controls, the FMCSA will provide the carrier written notice of this finding as soon as practicable, but not later than 45 days after the completion of the safety audit. The carrier's Certificate of Registration will

remain provisional and the carrier's on-highway performance will continue to be closely monitored for the remainder of the 18-month provisional registration period.

(c) If the FMCSA determines, based on the safety audit, that the Mexico-domiciled carrier's basic safety management controls are inadequate, it will initiate a suspension and revocation proceeding in accordance with § 385.111 of this subpart.

(d) The safety audit is also used to assess the basic safety management controls of Mexico-domiciled applicants for provisional operating authority to operate beyond United States municipalities and commercial zones on the United States-Mexico border under § 365.507 of this subchapter.

§ 385.109 The compliance review.

(a) The criteria used in a compliance review to determine whether a Mexico-domiciled carrier granted provisional operating authority under § 365.507 of this subchapter exercises the necessary basic safety management controls are specified in Appendix B to this part.

(b) *Satisfactory Rating.* If the FMCSA assigns a Mexico-domiciled carrier a Satisfactory rating following a compliance review conducted under this subpart, the FMCSA will provide the carrier written notice as soon as practicable, but not later than 45 days after the completion of the compliance review. The carrier's operating authority will remain in provisional status and its on-highway performance will continue to be closely monitored for the remainder of the 18-month provisional registration period.

(c) *Conditional Rating.* If the FMCSA assigns a Mexico-domiciled carrier a Conditional rating following a compliance review conducted under this subpart, it will initiate a revocation proceeding in accordance with § 385.111 of this subpart. The carrier's provisional operating authority will not be suspended prior to the conclusion of the revocation proceeding.

(d) *Unsatisfactory Rating.* If the FMCSA assigns a Mexico-domiciled carrier an Unsatisfactory rating following a compliance review conducted under this subpart, it will initiate a suspension and revocation proceeding in accordance with § 385.111 of this subpart.

§ 385.111 Suspension and revocation of Mexico-domiciled carrier registration.

(a) If a carrier is assigned an ''Unsatisfactory'' safety rating following a compliance review conducted under this subpart, or a safety audit conducted under this subpart determines that a carrier does not exercise the basic safety management controls necessary to ensure safe operations, the FMCSA will provide the carrier written notice, as soon as practicable, that its registration will be suspended effective 15 days from the service date of the notice unless the carrier demonstrates, within 10 days of the service date of the notice, that the compliance review or safety audit contains material error.

(b) For purposes of this section, material error is a mistake or series of mistakes that resulted in an erroneous safety rating or an erroneous determination that the carrier does not exercise the necessary basic safety management controls.

(c) If the carrier demonstrates that the compliance review or safety audit contained material error, its registration will not be suspended. If the carrier fails to show a material error in the safety audit, the FMCSA will issue an Order:

(1) Suspending the carrier's provisional operating authority or provisional Certificate of Registration and requiring it to immediately cease all further operations in the United States; and

(2) Notifying the carrier that its provisional operating authority or provisional Certificate of Registration will be revoked unless it presents evidence of necessary corrective action within 30 days from the service date of the Order.

(d) If a carrier is assigned a ''Conditional'' rating following a compliance review conducted under this subpart, the provisions of subparagraphs (a) through (c) of this section will apply, except that its provisional registration will not be suspended under paragraph (c)(1) of this section.

(e) If a carrier subject to this subpart fails to provide the necessary documents for a safety audit or compliance review upon reasonable request, or fails to submit evidence of the necessary corrective action as required by § 385.105 of this subpart, the FMCSA will provide the carrier with written notice, as soon as practicable, that its registration will be suspended 15 days from the service date of the notice unless it provides all necessary documents or information. This suspension will remain in effect until the necessary documents or information are produced and:

(1) A safety audit determines that the carrier exercises basic safety management controls necessary for safe operations;

(2) The carrier is rated Satisfactory or Conditional after a compliance review; or

(3) The FMCSA determines, following review of the carrier's response to a demand for corrective action under § 385.105, that the carrier has taken the necessary corrective action.

(f) If a carrier commits any of the violations specified in § 385.105(a) of this subpart after the removal of a suspension issued under this section, the suspension will be automatically reinstated. The FMCSA will issue an Order requiring the carrier to cease further operations in the United States and demonstrate, within 15 days from the service date of the Order, that it did not commit the alleged violation(s). If the carrier fails to demonstrate that it did not commit the violation(s), the FMCSA will issue an Order revoking its provisional operating authority or provisional Certificate of Registration.

(g) If the FMCSA receives credible evidence that a carrier has operated in violation of a suspension order issued under this section, it will issue an Order requiring the carrier to show cause, within 10 days of the service date of the Order, why its provisional operating authority or provisional Certificate of Registration should not be revoked. If the carrier fails to make the necessary showing, the FMCSA will revoke its registration.

(h) If a Mexico-domiciled motor carrier operates a commercial motor vehicle in violation of a suspension or out-of-service order, it is subject to the penalty provisions in 49 U.S.C. 521(b)(2)(A), not to exceed $10,000 for each offense.

(i) Notwithstanding any provision of this subpart, a carrier subject to this subpart is also subject to the suspension and revocation provisions of 49 U.S.C. 13905 for repeated violations of DOT regulations governing its motor carrier operations.

§ 385.113 Administrative review.

(a) A Mexico-domiciled motor carrier may request the FMCSA to conduct an administrative review if it believes the FMCSA has committed an error in assigning a safety rating or suspending or revoking the carrier's provisional operating authority or provisional Certificate of Registration under this subpart.

(b) The carrier must submit its request in writing, in English, to the Associate Administrator for Enforcement, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington DC 20590.

(c) The carrier's request must explain the error it believes the FMCSA committed in assigning the safety rating or suspending or revoking the carrier's provisional operating authority or

provisional Certificate of Registration and include any information or documents that support its argument.

(d) The FMCSA will complete its administrative review no later than 10 days after the carrier submits its request for review. The Associate Administrator's decision will constitute the final agency action.

§ 385.115 Reapplying for provisional registration.

(a) A Mexico-domiciled motor carrier whose provisional operating authority or provisional Certificate of Registration has been revoked may reapply under part 365 or 368 of this subchapter, as appropriate, no sooner than 30 days after the date of revocation.

(b) The Mexico-domiciled motor carrier will be required to initiate the application process from the beginning. The carrier will be required to demonstrate how it has corrected the deficiencies that resulted in revocation of its registration and how it will ensure that it will have adequate basic safety management controls. It will also have to undergo a pre-authorization safety audit if it applies for provisional operating authority under part 365 of this subchapter.

§ 385.117 Duration of safety monitoring system.

(a) Each Mexico-domiciled carrier subject to this subpart will remain in the safety monitoring system for at least 18 months from the date FMCSA issues its provisional Certificate of Registration or provisional operating authority, except as provided in paragraphs (c) and (d) of this section.

(b) If, at the end of this 18-month period, the carrier's most recent safety audit or safety rating was Satisfactory and no additional enforcement or safety improvement actions are pending under this subpart, the Mexico-domiciled carrier's provisional operating authority or provisional Certificate of Registration will become permanent.

(c) If, at the end of this 18-month period, the FMCSA has not been able to conduct a safety audit or compliance review, the carrier will remain in the safety monitoring system until a safety audit or compliance review is conducted. If the results of the safety audit or compliance review are satisfactory, the carrier's provisional operating authority or provisional Certificate of Registration will become permanent.

(d) If, at the end of this 18-month period, the carrier's provisional operating authority or provisional Certificate of Registration is suspended under § 385.111(a) of this subpart, the carrier will remain in the safety monitoring system until the FMCSA either:

(1) Determines that the carrier has taken corrective action; or

(2) Completes measures to revoke the carrier's provisional operating authority or provisional Certificate of Registration under § 385.111(c) of this subpart.

§ 385.119 Applicability of safety fitness and enforcement procedures.

At all times during which a Mexico-domiciled motor carrier is subject to the safety monitoring system in this subpart, it is also subject to the general safety fitness procedures established in subpart A of this part and to compliance and enforcement procedures applicable to all carriers regulated by the FMCSA.

3. Part 385 is amended by adding a new Appendix A to read as follows:

Appendix A to Part 385—Explanation of Safety Audit Evaluation Criteria

I. General

(a) Section 210 of the Motor Carrier Safety Improvement Act (49 U.S.C. 31144) directed the Secretary to establish a procedure whereby each owner and each operator granted new authority must undergo a safety review within 18 months after the owner or operator begins operations. The Secretary was also required to establish the elements of this safety review, including basic safety management controls. The Secretary, in turn, delegated this to the FMCSA.

(b) To meet the safety standard, a motor carrier must demonstrate to the FMCSA that it has basic safety management controls in place which function adequately to ensure minimum acceptable compliance with the applicable safety requirements. A ''safety audit evaluation criteria'' was developed by the FMCSA, which uses data from the safety audit and roadside inspections to determine that each owner and each operator applicant for a provisional operating authority or provisional Certificate of Registration has basic safety management controls in place. The term ''safety audit'' is the equivalent to the ''safety review'' required by Sec. 210. Using ''safety audit'' avoids any possible confusion with the safety reviews previously conducted by the agency that were discontinued on September 30, 1994.

(c) The safety audit evaluation process developed by the FMCSA is used to:

1. Evaluate basic safety management controls and determine if each owner and each operator is able to operate safely in interstate commerce; and

2. Identify owners and operators who are having safety problems and need improvement in their compliance with the FMCSRs and the HMRs, before they are granted permanent registration.

II. Source of the Data for the Safety Audit Evaluation Criteria

(a) The FMCSA's evaluation criteria are built upon the operational tool known as the safety audit. This tool was developed to assist auditors and investigators in assessing the adequacy of a new entrant's basic safety management controls.

(b) The safety audit is a review of a Mexico-domiciled motor carrier's operation and is used to:

1. Determine if a carrier has the basic safety management controls required by 49 U.S.C. 31144;

2. Meet the requirements of Section 350 of the DOT Appropriations Act; and

3. In the event that a carrier is found not to be in compliance with applicable FMCSRs and HMRs, the safety audit can be used to educate the carrier on how to comply with U.S. safety rules.

(c) Documents such as those contained in the driver qualification files, records of duty status, vehicle maintenance records, and other records are reviewed for compliance with the FMCSRs and HMRs. Violations are cited on the safety audit. Performance-based information, when available, is utilized to evaluate the carrier's compliance with the vehicle regulations. Recordable accident information is also collected.

III. Determining if the Carrier Has Basic Safety Management Controls

(a) During the safety audit, the FMCSA gathers information by reviewing a motor carrier's compliance with ''acute'' and ''critical'' regulations of the FMCSRs and HMRs.

(b) Acute regulations are those where noncompliance is so severe as to require immediate corrective actions by a motor carrier regardless of the overall basic safety management controls of the motor carrier.

(c) Critical regulations are those where noncompliance relates to management and/or operational controls. These are indicative of breakdowns in a carrier's management controls.

(d) The list of the acute and critical regulations, which are used in determining if a carrier has basic safety management controls in place, is included in Appendix B, VII. List of Acute and Critical Regulations.

(e) Noncompliance with acute and critical regulations are indicators of inadequate safety management controls and usually higher than average accident rates.

(f) Parts of the FMCSRs and the HMRs having similar characteristics are combined together into six regulatory areas called ''factors.'' The regulatory factors, evaluated on the basis of the adequacy of the carrier's safety management controls, are:

1. Factor 1—General: Parts 387 and 390;

2. Factor 2—Driver: Parts 382, 383 and 391;

3. Factor 3—Operational: Parts 392 and 395;

4. Factor 4—Vehicle: Part 393, 396 and inspection data for the last 12 months;

5. Factor 5—Hazardous Materials: Parts 171, 177, 180 and 397; and

6. Factor 6—Accident: Recordable Accident Rate per Million Miles.

(g) For each instance of noncompliance with an acute regulation, 1.5 points will be assessed.

(h) For each instance of noncompliance with a critical regulation, 1 point will be assessed.

A. Vehicle Factor

(a) When at least three vehicle inspections are recorded in the Motor Carrier Management Information System (MCMIS) during the twelve months before the safety audit or performed at the time of the review, the Vehicle Factor (Part 396) will be evaluated on the basis of the Out-of-Service (OOS) rates and noncompliance with acute and critical regulations. The results of the review of the OOS rate will affect the Vehicle Factor as follows:

1. If the motor carrier has had at least three roadside inspections in the twelve months before the safety audit, and the vehicle OOS rate is 34 percent or higher, one point will be assessed against the carrier. That point will be added to any other points assessed for discovered noncompliance with acute and critical regulations of part 396 to determine the carrier's level of safety management control for that factor; and

2. If the motor carrier's vehicle OOS rate is less than 34 percent, or if there are less than three inspections, the determination of the carrier's level of safety management controls will only be based on discovered noncompliance with the acute and critical regulations of part 396.

(b) Over two million inspections occur on the roadside each year. This vehicle inspection information is retained in the MCMIS and is integral to evaluating motor carriers' ability to successfully maintain their vehicles, thus preventing them from being placed OOS during roadside inspections. Each safety audit will continue to have the requirements of part 396, Inspection, Repair, and Maintenance, reviewed as indicated by the above explanation.

B. The Accident Factor

(a) In addition to the five regulatory factors, a sixth factor is included in the process to address the accident history of the motor carrier. This factor is the recordable accident rate, which the carrier has experienced during the past 12 months. Recordable accident, as defined in 49 CFR 390.5, means an accident involving a commercial motor vehicle operating on a public road in interstate or intrastate commerce which results in a fatality; a bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or one or more motor vehicles incurring disabling damage as a result of the accident requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(b) Experience has shown that urban carriers, those motor carriers operating entirely within a radius of less than 100 air miles (normally urban areas), have a higher exposure to accident situations because of their environment and normally have higher accident rates.

(c) The recordable accident rate will be used in determining the carrier's basic safety management controls in Factor 6, Accident. It will be used only when a carrier incurs two or more recordable accidents within the 12 months before the safety audit. An urban carrier (a carrier operating entirely within a radius of 100 air miles) with a recordable rate per million miles greater than 1.7 will be deemed to have inadequate basic safety management controls for the accident factor. All other carriers with a recordable accident rate per million miles greater than 1.5 will be deemed to have inadequate basic safety management controls for the accident factor. The rates are the result of roughly doubling the national average accident rate in Fiscal Years 1994, 1995, and 1996.

(d) The FMCSA will continue to consider preventability when a new entrant contests the evaluation of the accident factor by presenting compelling evidence that the recordable rate is not a fair means of evaluating its accident factor. Preventability will be determined according to the following standard: ''If a driver, who exercises normal judgment and foresight, could have foreseen the possibility of the accident that in fact occurred, and avoided it by taking steps within his/her control which would not have risked causing another kind of mishap, the accident was preventable.''

C. Factor Ratings

For Factors 1 through 5, if the combined violations of acute and or critical regulations for each factor is equal to three or more points, the carrier is determined not to have basic safety management controls for that individual factor.

If the recordable accident rate is greater than 1.7 recordable accidents per million miles for an urban carrier (1.5 for all other carriers), the carrier is determined to have inadequate basic safety management controls.

IV. Overall Determination of the Carrier's Basic Safety Management Controls

If the carrier is evaluated as having inadequate basic safety management controls in at least three separate factors, the carrier will be considered to have inadequate safety management controls in place and corrective action will be necessary in order to avoid having its provisional operating authority or provisional Certificate of Registration revoked.

For example, FMCSA evaluates a carrier finding:

(1) One instance of noncompliance with a critical regulation in part 387 scoring one point for Factor 1;

(2) Two instances of noncompliance with acute regulations in part 382 scoring three points for Factor 2;

(3) Three instances of noncompliance with critical regulations in part 396 scoring three points for Factor 4; and

(4) Three instances of noncompliance with acute regulations in parts 171 and 397 scoring four and one-half (4.5) points for Factor 5.

In this example, the carrier scored three or more points for Factors 2, 4, and 5 and FMCSA determined the carrier had inadequate basic safety management controls in at least three separate factors. FMCSA will require corrective action in order to avoid having the carrier's provisional operating authority or provisional Certificate of Registration suspended and possibly revoked.

Issued on: March 7, 2002.

Joseph M. Clapp,

Administrator.

[FR Doc. 02–5892 Filed 3–14–02; 8:45 am]

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Federal Register

Tuesday,
March 19, 2002

Part V

Department of Transportation

Federal Motor Carrier Safety Administration

49 CFR Parts 350 and 385
Certification of Safety Auditors, Safety Investigators, and Safety Inspectors; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 350 and 385

[Docket No. FMCSA–2001–11060]

RIN 2126–AA64

Certification of Safety Auditors, Safety Investigators, and Safety Inspectors

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: The FMCSA is amending the Federal Motor Carrier Safety Regulations (FMCSRs) by designating the current safety fitness regulations and adding Certification of Safety Auditors, Safety Investigators, and Safety Inspectors regulations. Section 211 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) requires that a certified motor carrier safety auditor perform any safety audit or compliance review conducted after December 31, 2002. This rule establishes procedures to certify and maintain certification for auditors and investigators. In addition, it requires certification for State or local government Motor Carrier Safety Assistance Program (MCSAP) employees performing driver/vehicle roadside inspections.

DATES: This rule is effective June 17, 2002. We must receive your comments by May 20, 2002.

ADDRESSES: You can mail, fax, hand deliver or electronically submit written comments to the Docket Management Facility, U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. The fax number is (202) 493–2251. Comments to the web site (*http://dmses.dot.gov/submit*) may be typed on-line. You must include the docket number that appears at the heading of this document in your comments. You may examine and copy all comments at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. You may also review the docket on the Internet at *http://dms.dot.gov.* If you want notification of receipt of comments, please include a self-addressed, stamped envelope or postcard, or after submitting comments electronically, print the acknowledgement page.

FOR FURTHER INFORMATION CONTACT: Mr. William C. Hill, Office of Bus & Truck Standards and Operations, (202) 366–4001, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Room 8301, Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m. EST, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination using the docket number appearing at the top of this document in the docket room at the above address. The FMCSA will file comments received after the comment closing date in the docket and will consider late comments to the extent practicable. The FMCSA may, however, issue a final rule at any time after the close of the comment period.

Background

On December 9, 1999, the President signed the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106–159). Section 211 of the MCSIA requires the Secretary of Transportation to complete a rulemaking to improve training and provide for the certification of motor carrier safety auditors to conduct safety inspection audits and reviews. The legislation also gives the Secretary oversight responsibility for the motor carrier auditors and investigators it certifies, including the authority to decertify them. As enacted by Section 211(a), 49 U.S.C. 31148(b) and (c) read as follows:

(b) *Certified Inspection Audit Requirement.*—Not later than 1 year after completion of the Rulemaking required by subsection (a), any safety inspection audit or review required by, or based on the authority of, this chapter or chapter 5, 313, or 315 of this title and performed after December 31, 2002, shall be conducted by—

(1) A motor carrier safety auditor certified under subsection (a); or

(2) A Federal or State employee who, on the date of the enactment of this section, was qualified to perform such an audit or review.

(c) *Extension.*—If the Secretary determines that subsection (b) cannot be implemented within the 1-year period established by that subsection and notifies the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives of the determination and the reasons therefor, the Secretary may extend the deadline for compliance with subsection (b) by not more than 12 months.

Certification of Safety Auditors, Safety Investigators, and Safety Inspectors

The FMCSA is implementing Section 211 by establishing three types of certification: (1) Certification to conduct safety audits, (2) certification to conduct compliance reviews, and (3) certification to conduct roadside inspections. FMCSA or State or local government MCSAP employees qualified to perform compliance reviews on December 9, 1999, are grandfathered by 49 U.S.C. 31148(b)(2) and are not required to be certified under this rule.

The FMCSA is also grandfathering Federal, or State or local MCSAP, employees who had not been hired, or had not yet completed their normal training on December 9, 1999, but were fully trained and performing compliance reviews or roadside inspections before June 17, 2002, when we are closing the grandfather period.

We believe this complies with congressional intent, since these employees received the same kind of training as those statutorily grandfathered on December 9, 1999. Moreover, requiring these employees to repeat such training would impose unnecessary costs on their agencies and burdensome time constraints on the employees themselves, keeping them from performing their important, safety-related functions.

Grandfathered employees are treated as though they had been certified through the procedures described in this rule. As such, they are also required to maintain their virtual certification by completing the required training updates.

The FMCSA is augmenting its procedures for assessing the safety performance of motor carriers by adding a new tool, a safety audit. The agency is treating the term ''safety inspection audit or review '' used in Section 211 as equivalent to the ''safety review'' of new entrants into the motor carrier industry which is mandated by Sec. 210 of the MCSIA. The two provisions are closely related. Under Section 210, the Secretary is required to ''establish the elements of the safety review,'' which implies that it may be something less than a full compliance review pursuant to Part 385. The safety review is to be phased in ''in a manner that takes into account the availability of certified motor carrier safety auditors'' (49 U.S.C. 31144(c)(3), enacted by Section 210). Section 211 contemplates the use of certified auditors to perform the ''safety inspection audits and reviews'' that are ''required by, or based on the authority of (chapter 311) or chapter 5, 313, or 315 of'' title 49, United States Code. FMCSA

expects that such audits will be performed by FMCSA employees or by State inspectors. The language of section 211 authorizes non-government personnel to conduct the safety review required of new entrants. FMCSA seeks comments on the advisability of certifying non-government employees that meet all training and experience criteria to conduct safety reviews as provided in the IFR. In the interest of simplicity, the FMCSA will use the single term ''safety audit'' in the remainder of this document, and in a subsequent rulemaking to implement Section 210.

The term ''safety audit'' avoids any possible confusion with the safety reviews previously conducted by the agency, which were discontinued on September 30, 1994. A safety audit will provide educational and technical assistance to new entrant motor carriers and gather critical safety data needed to make an assessment of these carriers' safety performance and basic safety management controls. It will only be used to review carriers identified as new entrants, i.e., those registering for a USDOT identification number.

Currently, the FMCSA relies on the compliance review, an in-depth review, to assess a carrier's safety performance and compliance with the FMCSRs and applicable hazardous materials regulations (HMRs). They are typically performed only on motor carriers with poor performance, high accident rates, high vehicle or driver out-of-service rates, past poor compliance, or those against which non-frivolous complaints have been lodged. A compliance review performed on a motor carrier's operations usually results in a determination whether the carrier meets FMCSA's safety fitness standard.

Compliance reviews are performed on shippers of hazardous materials, but do not result in a safety rating, as shippers of hazardous materials are not subject to the FMCSRs.

The compliance review also provides recommendations to assist the carrier or hazardous materials shipper to attain full compliance with the regulations. Approximately 30% of compliance reviews result in enforcement actions.

The compliance review will retain its current procedures, report format, and purpose—to evaluate a motor carrier's safety fitness—and may trigger enforcement action. The FMCSA or the State MCSAP agency will certify Federal or State personnel to conduct compliance reviews and safety audits.

All individuals who conduct safety audits, compliance reviews, or driver/vehicle roadside inspections will be required to maintain their certification by performing a specific number of safety audits, compliance reviews, or inspections annually, with acceptable quality, and by successfully completing any required training. Failing to successfully complete training, or to demonstrate proficiency in conducting audits, reviews, or inspections, requires the individual to repeat the requirements established by the FMCSA for conducting safety audits, compliance reviews, or inspections.

The FMCSA is amending the MCSAP regulations to require that each State or local government participating in MCSAP certify that its employees performing safety audits, compliance reviews, and driver/vehicle roadside inspections meet minimum Federal training, experience, and proficiency standards (see 49 CFR 350.211(17)). These standards will be posted on the FMCSA website (*www.fmcsa.dot.gov*). This certification process is appropriate in that participating MCSAP States and local agencies already determine if their employees are qualified based on Federal standards. It also relieves them of the potential burden of requiring State or local government employees to travel out of state to be trained or to maintain their certifications to perform compliance reviews, safety audits, or roadside inspections.

The FMCSA is not including specific training requirements in this regulation. The agency needs flexibility to modify course content quickly to match changes in the FMCSRs and HMRs, or to adapt other elements of the training process to changed circumstances. Codification would make the program inflexible and difficult to manage.

The certification requirements, however, will be posted on the FMCSA website (*www.fmcsa.dot.gov*) and available in hard copy at its Washington, DC, headquarters. These requirements will include the successful completion of a training course covering the FMCSRs and HMRs. Certification and maintenance requirements will be updated as necessary to reflect changes in the safety regulations. The training course will thus remain current. FMCSA will work with the States and other stakeholders as we consider and develop any amendments to the training requirements.

This interim final rule is effective on June 17, 2002. Under the fiscal year 2002 DOT Appropriations Act (Public Law 107–87; December 18, 2001), Congress directed that as a precondition to processing applications of Mexico-domiciled carriers for authority to operate beyond the commercial zone, FMCSA must issue an interim final rule on this statutory requirement. This regulation only imposes a requirement to be certified as provided for in the Motor Carrier Safety Improvement Act of 1999 (MCSIA)(Pub. L. 106–159). Certification of Federal safety investigators and State or local government employees participating in MCSAP who perform compliance reviews or driver/vehicle roadside inspections, means that these officials have successfully completed certain training programs. These training requirements have been in effect for a number of years, and the rule imposes no new burdens on such officials. The rule also creates a new kind of review—the ''safety audit''—and a corresponding certification, but the training required to be certified as a safety auditor is simply a less comprehensive version of that required to conduct compliance reviews and driver/vehicle roadside inspections. Because of Congress' direction and the limited impact of the regulations, FMCSA finds that there is good cause that notice and comment are contrary to the public interest under 5 U.S.C. 553(b)(3)(B).

Rulemaking Analysis and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866, and is significant within the meaning of Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). It has been reviewed by the Office of Management and Budget. The subject of requirements for certification of safety auditors, investigators and inspectors will likely generate considerable public interest within the meaning of Executive Order 12866. We have classified the rule as significant because of the high level of public and congressional interest in the program.

The IFR establishes the safety certification process for persons who conduct safety audits, compliance reviews, and safety inspections. This IFR will have minimal or no economic impact. The FMCSA has developed training material and requirements for the three types of certifications to ensure uniform implementation with respect to all persons who must comply with the rule. To maintain certification, individuals must conduct a minimum number of safety activities (i.e., audits, reviews, or inspections) per year. The FMCSA may develop other specific standards regarding initial certification or maintaining certification. However, Federal and State employees who

currently conduct compliance reviews and safety inspections will not have to undergo any additional training to comply with this rule. They would only be required to meet the new standards regarding maintenance of certification. States will be required to certify that their employees meet minimal Federal standards as part of their continued participation in the Motor Carrier Safety Assistance Program (MCSAP).

Currently, Federal employees who perform compliance reviews (CRs) or roadside inspections undergo an extensive training program, such as a six-week academy training class for safety investigators and a variety of refresher courses for those performing CRs. State employees who conduct these reviews or inspections under the Motor Carrier Safety Assistance Program have training requirements that are comparable to, or as effective as, the Federal program. The agency believes that the training required for initial certification of new Federal or State employees assigned to conduct safety activities will be similar to the training that these individuals currently undergo. While there may be some additional training material developed and taught due to regulatory or program changes, it is unlikely that there will be any measurable increase in the amount of time trainees must spend in class. Any extra material would most likely be offset by reduction in the amount of time spent on topics that require less classroom instruction to master the concepts. Accordingly, we do not believe that this rule will impose any new costs on Federal or State employees who undergo training. If there are costs imposed on State agencies, those expenses are eligible expenses under the MCSAP program and as such would be paid through the program as opposed to being paid by the States.

Although the benefits of this IFR cannot be quantified at this time, we believe this rulemaking will ensure greater uniformity and consistency in the quality of safety audits, compliance reviews, and roadside inspections, than would otherwise exist. Under the IFR, Federal or State employees will have to complete a minimum number of safety activities (safety audits, compliance reviews, roadside inspections) to maintain their certifications. This should ensure consistency in the quality of the reviews and inspections, and thereby increase the likelihood that enforcement officials identify unsafe motor carriers, drivers, and vehicles during safety activities. The ultimate result should be a reduction in crashes, injuries and fatalities. (See OMCHS Safety Program Performance Measures: Assessment of Initial Models and Plans for Second Generation Models, 1999, for an analysis of the safety impact of compliance reviews. A copy of this analysis is available in the docket described above under **ADDRESSES**).

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FMCSA has considered the effects of this regulatory action on small entities. This rule is directed at certifying federal and state safety auditors, investigators, and inspectors. Federal and State employees who currently conduct compliance reviews and safety inspections will not have to undergo any additional training to comply with this rule. Therefore, we have determined that there would be minimal or no economic impact on motor carriers, including small entities. We therefore certify that it would not have a significant impact on a substantial number of small entities.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this rule under E.O. 13045, ''Protection of Children from Environmental Health Risks and Safety Risks.'' This rule is not economically significant and does not concern an environmental risk to health or safety that would disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it has been determined that this action does not have substantial direct Federalism implications that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation. It will not impose additional costs or burdens on the States. This action will not have a significant effect on the States' ability to execute traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor, or require through regulations. The FMCSA has determined that this proposal does not contain new collection of information requirements for the purpose of the PRA.

National Environmental Policy Act

The Federal Motor Carrier Safety Administration (FMCSA) is a new administration within the Department of Transportation (DOT). The FMCSA is currently developing an agency order that will comply with all statutory and regulatory policies under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). We expect the draft FMCSA Order to appear in the **Federal Register** for public comment in the near future. The framework of the FMCSA Order is consistent with and reflects the procedures for considering environmental impacts under DOT Order 5610.1C. The FMCSA analyzed this rule under the NEPA and DOT Order 5610.1C. We believe it would be among the type of regulations that would be categorically excluded from any environmental assessment.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under Executive Order 13211 because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy because it sets standards for personnel who want to serve as safety auditors and has no direct relation to energy consumption. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a

Statement of Energy Effects under Executive Order 13211.

List of Subjects

49 CFR Part 350

Highway safety, Motor carriers, and Commercial Motor Carrier Safety Assistance Program.

49 CFR Part 385

Highway safety, Motor carriers, and Safety fitness procedures.

In consideration of the foregoing, Title 49, Code of Federal Regulations, Chapter III, part 350 is amended as set forth below:

1. The authority citation for Part 350 is revised to read as follows:

Authority: 49 U.S.C. 31100–31104, 31108, 31136, 31140–31141, 31144, 31148, 31161, 31310–31311, 31502; and 49 CFR 1.73.

2. Amend § 350.211 by adding (17).

§ 350.211 What is the format of the certification required by § 350.209?

* * * * *

(17) The State or a local recipient of MCSAP funds will certify that it meets the minimum Federal standards set forth in 49 CFR part 385, Subpart C, for training and experience of employees performing safety audits, compliance reviews, or driver/vehicle roadside inspections.

In consideration of the foregoing, Title 49, Code of Federal Regulations, Chapter III, part 385 is amended as set forth below:

PART 385—SAFETY FITNESS PROCEDURES

3. The authority citation for Part 385 is revised to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5113, 13901–13905, 31136, 31144, 31148, and 31502; Section 350 of Public Law 107–87; and 49 CFR 1.73.

4. Amend paragraph 2 in the definition of *Reviews* in § 385.3 to read as follows:

§ 385.3 Definitions.

Reviews. For the purposes of this part:

* * * * *

(2) *Safety Audit* means an examination of a motor carrier's operations to provide educational and technical assistance on safety and the operational requirements of the FMCSRs and applicable HMRs and to gather critical safety data needed to make an assessment of the carrier's safety performance and basic safety management controls. Safety audits do not result in safety ratings.

6. Part 385 is amended by adding a new Subpart C to read as follows:

Subpart C—Certification of Safety Auditors, Safety Investigators, and Safety Inspectors

Sec.

§ 385.201 Who is qualified to perform a review of a motor carrier?

(a) An FMCSA employee, or a State or local government employee funded through MCSAP, who was qualified to perform a compliance review before June 17, 2002, may perform a compliance review, safety audit or roadside inspection if he or she complies with § 385.203(b).

(b) A person who was not qualified to perform a compliance review before June 17, 2002, may perform a compliance review, safety audit or roadside inspection after complying with the requirements of § 385.203(a).

§ 385.203 What are the requirements to obtain and maintain certification?

(a) After June 17, 2002, a person who is not qualified under § 385.201(a) may not perform a compliance review, safety audit, or roadside inspection unless he or she has been certified by FMCSA or a State or local agency applying the FMCSA standards after successfully completing classroom training and examinations on the FMCSRs and HMRs as described in detail on the FMCSA website (*www.fmcsa.dot.gov*). These employees must also comply with the maintenance of certification/qualification requirements of paragraph (b) of this section.

(b) *Maintenance of certification/qualification.* A person may not perform a compliance review, safety audit, or roadside inspection unless he or she meets the quality-control and periodic re-training requirements adopted by the FMCSA to ensure the maintenance of high standards and familiarity with amendments to the FMCSRs and HMRs. These maintenance of certification/qualification requirements are described in detail on the FMCSA website (*www.fmcsa.dot.gov*).

(c) The requirements of paragraphs (a) and (b) of this section for training, performance and maintenance of certification/qualification, which are described on the FMCSA website (*www.fmcsa.dot.gov*), are also available in hard copy from the Office of Professional Development and Training, FMCSA, 400 7th Street, SW., Washington, DC 20590.

§ 385.205 How can a person who has lost his or her certification be re-certified?

He or she must successfully complete the requirements of § 385.203(a) and (b).

Issued on: March 7, 2002.

Joseph M. Clapp,

Administrator.

[FR Doc. 02–5894 Filed 3–14–02; 8:45 am]

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Federal Register

Tuesday,
March 19, 2002

Part VI

Department of Transportation

Federal Motor Carrier Safety Administration

49 CFR Part 393

Parts and Accessories Necessary for Safe Operation; Certification of Compliance With Federal Motor Vehicle Safety Standards (FMVSSs); Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 393

[Docket No. FMCSA–01–10886]

RIN 2126–AA69

Parts and Accessories Necessary for Safe Operation; Certification of Compliance With Federal Motor Vehicle Safety Standards (FMVSSs)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FMCSA proposes to amend the Federal Motor Carrier Safety Regulations (FMCSRs) so that motor carriers ensure that each commercial motor vehicle (CMV) they operate in interstate commerce displays a label certifying that the vehicle complies with all applicable Federal Motor Vehicle Safety Standards (FMVSSs) in effect on the date of manufacture. This rulemaking ensures that all motor carriers operating CMVs in the United States use only vehicles that were certified by the manufacturer as meeting all applicable Federal safety performance requirements.

DATES: Comments must be received on or before May 20, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Office of Bus and Truck Standards and Operations, (202) 366–4009, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You can mail or deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. You can also submit comments electronically at *http://dms.dot.gov.* Please include the docket number that appears in the heading of this document. You can examine and copy this document and all comments received at the same Internet address or at the Dockets Management Facility from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you want to know that we received your comments, please include a self-addressed, stamped postcard or include a copy of the acknowledgement page that appears after you submit comments electronically.

Background

Part 567 of title 49 of the Code of Federal Regulations (49 CFR part 567) requires that manufacturers of motor vehicles built for sale or use in the United States must affix a label certifying that the motor vehicle meets the applicable Federal Motor Vehicle Safety Standards (FMVSSs) in effect on the date of manufacture.[1] Part 567 provides detailed requirements concerning the location at which the label must be placed and the minimum information that must appear on the label. These requirements are applicable to manufacturers of motor vehicles produced for use in the United States and the label must be affixed prior to the first sale of the vehicle.

The National Traffic and Motor Vehicle Safety Act (''Vehicle Safety Act'') (49 U.S.C. 30101, *et seq.*) expressly prohibits vehicles from being imported into the United States unless the vehicles—

(a) Comply with all applicable FMVSSs in effect on the date of manufacture, and

(b) Bear a label certifying compliance with the FMVSSs and applied to the vehicle either by a manufacturer at the time of manufacture or by a registered importer after the vehicle has been brought into compliance.[2]

This statutory requirement is currently codified at 49 U.S.C. 30112. The regulations implementing the statute, including 49 CFR parts 567 and 571, are issued and enforced by the National Highway Traffic Safety Administration (NHTSA).

Effect of the Vehicle Safety Act on U.S.-Based Motor Carrier Operations

Generally, U.S.-based motor carriers operating CMVs (as defined in 49 CFR 390.5) in interstate commerce only have access to vehicles that were either originally manufactured domestically for use in the United States and have the required certification label, or vehicles that were imported into the United States in accordance with the applicable NHTSA importation regulations, including requirements for certification documentation. Vehicles imported into the United States must have the required certification label certifying compliance with the applicable FMVSSs. Therefore, from a practical standpoint, almost all vehicles operated by U.S.-based motor carriers have certification labels that meet the requirements of 49 CFR part 567.[3]

Effect of the Vehicle Safety Act on Canada and Mexico-Based Motor Carriers

Commercial motor vehicles operated in the United States by Canada and Mexico-based motor carriers must also comply with the FMVSSs and bear a certification label. NHTSA issued an interpretation letter in 1975 stating that the statutory prohibition against importing vehicles that do not meet the FMVSSs and bear a certification label (49 U.S.C. 30112) is applicable to foreign-based CMVs used in the United States. Therefore, the commercial use of CMVs to transport passengers or cargo into the United States constitutes importation of the vehicle into the United States.

This means that Canada and Mexico-based motor carriers are responsible for taking the necessary actions to comply with the Vehicle Safety Act before operating CMVs in the United States. The Department of Transportation advised Mexico and Canada-based motor carriers about this requirement in its November 1995 Motor Carrier Operating Requirements Handbook, which was printed in three languages and distributed to all participants at a North American Free Trade Agreement (NAFTA) conference held in San Antonio, TX on November 14–16, 1995.

In a companion notice of proposed rulemaking published in today's **Federal Register**, NHTSA proposes to codify its interpretation of the definition of import for the purpose of enforcing the requirements of 49 U.S.C. 30112 with respect to operators of CMVs transporting cargo and passengers.

[1] These standards are codified in 49 CFR part 571. Most, but not all, of the FMVSSs are cross-referenced in existing requirements of part 393.

[2] An individual or business registered with NHTSA as a registered importer may import non-complying motor vehicles into the United States if NHTSA has determined that the vehicles are capable of being readily altered to comply with all applicable standards in effect at the time the vehicle is imported. The registered importer must provide the Federal Government with a bond at least equal to the dutiable value of the vehicle before it can be imported and must bring the vehicle into full compliance before the vehicle may be sold and the bond released.

[3] The FMVSSs and the certification label requirement are not applicable to vehicles or items of equipment manufactured for, and sold directly to, the Armed Forces of the United States in conformance with contract specifications (49 CFR 571.7). Therefore, when a motor carrier purchases surplus equipment from the Armed Forces for subsequent use in interstate commerce, the vehicle may not have a certification label. However, because the FMCSRs cross-reference most of the FMVSSs, the motor carrier would be required to ensure that the vehicle was retrofitted to meet the referenced standards as well as all applicable motor carrier regulations.

Safety Concerns About Vehicles Operated by Foreign Motor Carriers

With the implementation of the motor carrier-related provisions of the North American Free Trade Agreement (NAFTA), much more attention has been focused on the safety of commercial motor vehicles operated by Canada and Mexico-based carriers. Representatives of the U.S. motor carrier industry have expressed concerns to the Department of Transportation that vehicles operated by foreign motor carriers were not manufactured to meet all the applicable U.S. safety requirements; specifically, all the FMVSSs in effect on the date of manufacture of the vehicles.

Canada-Based Commercial Motor Vehicles

The vehicles operated by Canada-based motor carriers are manufactured to comply with the Canadian Motor Vehicle Safety Standards (CMVSSs) that are, to a large extent, comparable to the U.S. safety requirements. In many instances, provisions of the CMVSSs are identical to requirements in the FMVSSs. Manufacturers of vehicles sold for use in Canada must certify compliance with the CMVSSs and the vehicles must bear a Canadian certification label.

Generally, commercial motor vehicles operated by Canada-based motor carriers in the United States would not have a certification label that meets the requirements of 49 CFR part 567. Although these vehicles do not have certification labels that meet U.S. requirements, the vehicles meet most, if not all, U.S. safety requirements because of the similarities between the two sets of safety standards.

Despite the similarity between U.S. and Canadian vehicle manufacturing standards, the operation of commercial motor vehicles into the United States by Canada-based carriers does constitute an import. Thus, a Canadian carrier that uses vehicles that do not bear a certification of compliance with the FMVSSs would be required to obtain a certification label for each vehicle under this proposed rule.

Mexico-Based Commercial Motor Vehicles

The vehicles operated by Mexico-based motor carriers are manufactured to comply with safety requirements established by the Mexican government. Currently, Mexico does not have a series of motor vehicle safety standards similar to those of the United States and Canada. Therefore, commercial motor vehicles operated by Mexico-based motor carriers in the United States typically would not have a certification label that meets the requirements of 49 CFR part 567 unless the manufacturer built the vehicle to meet the FMVSSs and voluntarily affixed a label certifying compliance with the U.S. requirements. It is unclear how many vehicles produced for use in Mexico meet all applicable U.S. safety requirements.

Since the operation of commercial motor vehicles into the United States by Mexico-based carriers constitutes importation, a Mexican carrier using vehicles that do not bear a certification of compliance with the FMVSSs would be required to obtain a certification label for each vehicle under this proposed rule.

U.S. Consultations With Canada and Mexico About the Vehicle Safety Act

NHTSA and FMCSA personnel met with representatives of the Mexican and Canadian governments and Mexican manufacturers and trucking industry associations in Mexico City on June 20, 2001. NHTSA and FMCSA staff were told by Mexican vehicle manufacturers that most Mexican commercial vehicles built since 1994 were built to meet the FMVSSs. Currently, there are approximately 400,000 trucks and buses that operate on the Federal roads in Mexico. About 130,000 of those vehicles were built since 1994 and may comply with the FMVSSs. Most of these 130,000 trucks and buses, however, do not have a FMVSS certification label because it is not required for vehicles manufactured for sale and use in Mexico.

NHTSA, FMCSA, the United States Customs Service (USCS), and the Environmental Protection Agency (EPA) conducted a follow-up seminar in Mexico on August 2–3, 2001, to advise representatives of Mexican vehicle manufacturers and the motor carrier industry about U.S. requirements. During the seminar, the Mexican vehicle manufacturers, most of which are affiliated with U.S. and European vehicle manufacturers that build vehicles for the U.S. market, indicated that, if permitted to do so, they would consider applying a certification label retroactively depending on the results of their review of vehicle test data, and their ability to make a determination that a particular vehicle or group of vehicles met all applicable FMVSSs in effect on the date of manufacture.

Although FMCSA's safety regulations require that all motor carriers operating in the United States meet the same safety requirements, without exception, the FMCSRs do not currently include a requirement that vehicles have a label certifying compliance with the FMVSSs. The FMCSRs include numerous cross-references to specific FMVSSs that have the effect of requiring all motor carriers to ensure that their vehicles are equipped with most of the safety features/equipment required by the FMVSSs. However, FMCSA's rules do not currently require that motor carriers' CMVs carry a label to verify that the vehicle manufacturer followed the FMVSS self-certification process.

The absence of an FMCSA rule to require motor carriers to comply with 49 U.S.C. 30112 means that motor carriers could use uncertified commercial vehicles that may not meet all of the applicable FMVSSs, and not be subject to effective enforcement action by the Department of Transportation. The Department believes this is an unacceptable situation and that FMCSA should exercise its statutory authority over motor carrier operational safety to require motor carriers to comply with 49 U.S.C. 30112.

FMCSA's Regulatory Authority

NHTSA and the FMCSA have complementary responsibilities to ensure vehicle safety under their respective enabling legislation. NHTSA's responsibility generally covers the design and safety compliance testing of motor vehicles, and the motor vehicle manufacturers and others responsible for those activities. FMCSA's responsibility concerns the safe operation of CMVs in interstate and foreign commerce, the motor carriers conducting the operations, and the CMV drivers.

Generally, enforcement of the FMVSSs by FMCSA and its State partners would be accomplished through roadside inspections. Under current roadside inspection enforcement procedures, if violations or deficiencies of the FMCSRs are serious enough to meet the current out-of-service criteria, the vehicle is placed out of service. The roadside inspection procedure is the same for all CMVs operated in the United States, regardless of the motor carrier's country of domicile.

If FMCSA adopts the proposed rule requiring that motor carriers ensure that their vehicles display a valid certification label, the agency and its State partners would then be able to enforce the section 30112 prohibition against the use or importation of non-compliant CMVs by citing motor carriers that fail to display the required certification label on their CMVs operated in the United States. Enforcement action would be taken in a manner consistent with the FMCSA's existing policies and programs as they relate to assuring compliance with other

vehicle-oriented regulations under 49 CFR part 393.[4] As it does with other FMCSR violations, the agency will compile data regarding uncertified vehicles and determine whether there are patterns of non-compliance by specific foreign motor carriers.

Discussion of Proposal

The FMCSA is proposing to amend the FMCSRs to require that motor carriers ensure that their CMVs have a certification label that meets the requirements of 49 CFR part 567, applied by the vehicle manufacturer or by a registered importer. As explained above, U.S. motor carriers typically would only have access to vehicles that meet the applicable FMVSSs and have a certification label that meets the requirements of 49 CFR part 567. Therefore, it is not expected that they would have to change the way they operate to comply with the requirements being proposed today. However, the rule would place upon them the responsibility for maintaining the label affixed by the manufacturer or registered importer.

In a companion document published in today's **Federal Register**, NHTSA is announcing its policy concerning the retroactive application of a certification label to vehicles that complied with the FMVSSs when they were built, or that subsequently had been modified to comply with the FMVSSs. This policy provides guidance to manufacturers that would make the determination whether the vehicles manufactured for use by Canada and Mexico-based motor carriers were originally built to meet the applicable FMVSSs, or whether the vehicles have been modified appropriately to meet U.S. standards.

Canada and Mexico-based motor carriers would have to contact the manufacturers of their vehicles to determine whether the vehicle meets U.S. safety standards for those cases in which the vehicle does not have a certification label. If the vehicle manufacturer has sufficient vehicle performance test data and is willing to provide a certification label, then the motor carrier would use that label to satisfy the requirements of the proposed rules.

If the vehicle manufacturer were unable or unwilling to provide certification labels, motor carriers would have the option of contacting a registered importer in the United States. The registered importer would then determine, in accordance with NHTSA's rules, whether the vehicle is eligible for importation into the United States, and what modifications, if any, are necessary before the vehicle could be certified as meeting the FMVSSs.

Proposed Effective Date and Compliance Date

The FMCSA is proposing that U.S. motor carriers comply with the certification label rule beginning on the effective date of the final rule. The agency is also proposing that foreign motor carriers that begin operations in the United States on or after that date, or expand their operations to go beyond the southern border zones, ensure that all CMVs used in the new or expanded operations have the necessary certification label prior to entering the United States. Among the foreign motor carriers included would be all Mexico-based motor carriers operating beyond the border zones for the first time. All other Canada and Mexico-based motor carriers operating in the United States prior to the effective date of the final rule would be allowed 24 months to bring their vehicles into compliance with the requirements, provided those vehicles were operated in the United States before the effective date.[5] This 24-month phase-in period would not apply to vehicles introduced into service in the United States on or after the effective date of the final rule. Those vehicles would have to display the necessary certification label if they enter the United States.

The FMCSA stresses that all motor carriers operating in the United States must comply with all applicable FMCSRs, including those that cross-reference FMVSSs. Through our cross-references to FMVSSs, we require motor carriers to ensure that their CMVs are equipped with specific safety devices and systems that NHTSA requires on newly manufactured vehicles, and that they are maintained to ensure their continued performance. The roadside inspection program, particularly the Level 1 inspection, will ensure that this is the case, to the greatest extent practicable. For purposes of roadside enforcement, the FMVSS label would be prima facie evidence of compliance with the proposed rule. Its presence, combined with having passed a thorough inspection by trained safety enforcement officials, would ensure that CMVs comply with U.S. motor carrier safety regulations. The 24-month timetable would not relieve these motor carriers from their responsibility for complying with the FMCSRs, including the FMVSSs cross-referenced therein.

This 24-month timetable would be compatible with FMCSA's NAFTA-related rulemakings published in today's **Federal Register**. Current Mexico-based holders of Certificates of Registration will be required to file new registration applications within 18 months in order to continue to operate in the border zones. These motor carriers will operate under provisional authority and be subjected to a new safety oversight program for an 18-month period after the new registration application is granted. If FMCSA determines a motor carrier has adequate safety-management controls, its provisional authority will become permanent at the end of the 18-month period. *See* the FMCSA's final rule concerning authority to operate in the border zones, and the agency's Interim Final Rule concerning the safety oversight program for Mexico-domiciled carriers, published in today's **Federal Register**.

The proposed implementation strategy would allow motor carriers currently operating CMVs in the United States that do not currently carry FMVSS certification labels sufficient time to rearrange or supplement their existing fleets to meet the requirement that all vehicles on the U.S. roadways have a FMVSS certification label. During this grace period, foreign-based CMVs would still be subject to all other FMCSA requirements, including those based on the FMVSSs cross-referenced in the FMCSRs. FMCSA requests public comments on the implementation strategy in general, and the 24-month grace period for Canada and Mexico-based motor carriers that are currently operating in the United States.

Rulemaking Analyses And Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA has determined that this proposed regulatory action is significant within the meaning of Executive Order 12866 and under the regulatory policies and procedures of the DOT because of

[4] In other words, failure to display a certification label could result in a citation and fine during a roadside inspection, or a civil penalty as a result of a compliance review. Under the current out-of-service criteria, it would not constitute grounds to place a vehicle out of service in the absence of vehicle defects meeting those criteria.

[5] In addition to carriers operating in the border commercial zones, this includes a relatively small number of Mexico-based carriers that currently operate CMVs beyond the border commercial zones, such as: (1) Carriers who received ICC operating authority before the 1982 moratorium on granting authority beyond the border zones; (2) Mexico-based carriers owned by U.S. citizens or companies; (3) carriers transporting shipments between Mexico and Canada through the United States; and (4) Mexico-based bus companies that received authority to operate vehicles beyond the border zones following the modification of the moratorium to allow cross-border charter or tour bus service in January 1994.

the level of public interest in rulemakings related to the motor carrier-related provisions of NAFTA.

This proposed rule would require that all CMVs bear a label certifying that the vehicle meets all applicable FMVSSs in effect on the date of manufacture. Based on the information presented here, FMCSA anticipates that this rulemaking will have minimal economic impact on the interstate motor carrier industry. It is extremely unlikely that any U.S.-based motor carriers would be operating CMVs that do not already carry the FMVSS certification label. Most foreign-based motor carriers are probably aware of the requirement that the vehicles they operate in the United States must comply with the applicable safety regulations. Under FMCSA's NAFTA-related rulemakings mentioned above, all Mexico-based motor carriers operating CMVs in the United States would need to certify on the form OP–1 (MX) or OP–2 that the CMVs they operate comply with the FMVSSs. This proposed rule would simply add the requirement that the FMVSS certification label attesting to the compliance of each vehicle be affixed to the vehicle. Since many of the CMVs manufactured in the past several years comply with the most complex elements of the FMVSSs, the FMCSA believes that relatively little effort may be required to bring the vehicles into full compliance, and that motor carriers will be interested in doing so. The monetary penalties associated with non-compliance with the requirements of this rule are likely to be significantly more than the potential cost of complying.[6] Thus, the FMCSA believes that the entities involved would take steps to achieve compliance with the lower cost alternative.

The Vehicle Safety Act requires that vehicles be certified to meet all applicable FMVSSs. However, because of the lack of enforcement of this certification requirement against motor carriers, it is likely that some motor carriers have been importing uncertified vehicles into the United States. Some of these carriers may now be compelled to either reduce the number of vehicles operated or else lease or purchase certified equipment. Others may find that, although their vehicles comply with the FMVSSs, they do not carry a certification label attesting to that fact. The costs of retrofitting such vehicles with certification labels would presumably be relatively small. This uncertainty complicates the task of separately determining the impact of this rule. The agency is interested in any information that will help to determine the economic impact of this proposed rule on motor carrier transportation and any additional impacts on industry customers.

Based upon its analyses, the FMCSA believes that the vast majority of motor carriers affected by this proposal would be able to comply with its terms. This proposed rule would only affect the operations of the small number of motor carriers that might elect not to bring their CMVs into compliance with the FMVSSs and ensure that they are labeled accordingly.

This rulemaking imposes no requirements that would generate new costs for motor carriers. Those entities would see no change to their operations, provided they ensure that their vehicles comply with the FMVSSs and have the appropriate certification label attached. Based upon the small number of motor carriers projected to be affected, and the minimal cost of attaching a certification label once the vehicle has been certified by the manufacturer or registered importer to meet the FMVSSs requirements, the agency believes that the overall adverse economic effects of this rulemaking would be minimal. This rulemaking, if adopted, would simply require that a CMV be labeled, providing readily-identifiable documentation of a CMV's compliance with the FMVSSs, a cornerstone of vehicle safety.

This rulemaking would not result in inconsistency or interference with another agency's actions or plans. The FMCSA believes that the rights and obligations of recipients of Federal grants will not be materially affected by this regulatory action.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612) the FMCSA has evaluated the effects of this proposed rulemaking on small entities. As indicated above, U.S.-based motor carriers would not be subject to any new requirements under this proposal. Generally, they would only have access to vehicles that comply with the FMVSSs and bear a certification label.

The motor carriers that would be economically impacted by this rulemaking would be Canada and Mexico-based motor carriers that do not elect to operate CMVs that comply with the FMVSSs and thus would not carry a certification label, and those carriers whose CMVs comply but have not ensured that their CMVs are labeled to document their compliance.

Foreign-based motor carriers can avoid the consequences of this proposed rule simply by operating FMVSS-compliant CMVs that carry the certification label required under 49 CFR 567. In companion documents in today's **Federal Register**, NHTSA has published: (1) A notice announcing its policy concerning retroactive certification of vehicles; (2) a notice of proposed rulemaking establishing record retention requirements in connection with such certifications; and (3) a notice of proposed rulemaking codifying its interpretation of the term ''import'' as used in the Vehicle Safety Act. FMCSA's rulemaking is intended to ensure that motor carriers comply with the Act, as interpreted by the Department of Transportation. Motor carriers would work with vehicle manufacturers to comply with the proposed retroactive certification policy. Alternatively, a motor carrier could have its vehicles certified by a registered importer under existing NHTSA requirements.

Therefore, the FMCSA hereby certifies that this regulatory action would not have a significant economic impact on a substantial number of domestic small entities. The FMCSA invites public comment on this determination.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose a Federal mandate resulting in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C 1531 *et seq.*).

Executive Order 12988 (Civil Justice Reform)

This proposed action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (April 23, 1997, 62 FR 19885), requires that agencies issuing ''economically significant'' rules that also concern an environmental health or safety risk that an agency has reason to believe may disproportionately affect children must include an evaluation of the environmental health and safety effects of the regulation on children. Section 5 of Executive Order 13045 directs an agency to submit for a ''covered regulatory action'' an evaluation of its

[6] Non-recordkeeping violations of part 393 are subject to civil penalties of up to $10,000 per violation.

environmental health or safety effects on children.

The agency has determined that this rule is not a ''covered regulatory action'' as defined under Executive Order 13045. First, this rule is not economically significant under Executive Order 12866 because the FMCSA has determined that the changes in this rulemaking would not have an impact of $100 million or more in any one year. Second, the agency has no reason to believe that the rule would result in an environmental health risk or safety risk that would disproportionately affect children. Mexico-domiciled motor carriers who intend to operate commercial motor vehicles anywhere in the United States must comply with current U.S. Environmental Protection Agency regulations and other United States environmental laws under this rule and others being published elsewhere in today's **Federal Register**. Further, the agency has conducted a programmatic environmental assessment (PEA) as discussed later in this preamble. While the PEA did not specifically address environmental impacts on children, it did address whether the rule would have environmental impacts in general. Based on the PEA, the agency has determined that the proposed rule would have no significant environmental impacts.

Executive Order 12630 (Taking of Private Property)

This proposed rule would implement a regulation applicable to CMVs used in interstate commerce that would complement NHTSA's regulation, applicable to all vehicles used on U.S. highways, which requires that the vehicles comply with all applicable FMVSSs in effect on the date of manufacture, and that they bear a certification label to document their compliance.

Motor carriers can avoid all of the implications of this mandate by operating CMVs that are in compliance with the FMVSSs and that bear a label documenting that fact. FMCSA believes that a large number of CMVs manufactured in Canada and Mexico already comply with the FMVSSs. However, many of these vehicles do not have certification labels that meet the requirements of 49 CFR part 567. No new action is required on the part of those motor carriers that currently operate or plan to operate on U.S. highways FMVSS-compliant vehicles that currently bear the certification label.

Motor carriers planning to operate FMVSS-compliant CMVs on U.S. highways, but whose vehicles do not currently bear the certification label, will be required to obtain certification labels in order to comply with the requirements of the NHTSA and the proposed rule. Again, once the CMVs bear the label to document their compliance, no further action is required in order to comply with this proposed FMCSA rule. However, if a motor carrier is operating or plans to operate on U.S. highways CMVs that do not comply with the FMVSSs, the motor carrier must take action to ensure that its vehicles are brought into compliance and are labeled to document that compliance. The action required would depend on the specific parts of the FMVSSs that the CMV does not comply with. For example, a CMV might comply with all of the FMVSSs with the exception of the portion of 49 CFR 571.119, New Pneumatic Tires for Vehicles Other Than Passenger Cars. The cost and complexity of bringing the CMV into compliance would be relatively low. On the other hand, if a CMV were not in compliance with 49 CFR 571.121, Air Brake Systems, because it was manufactured after the effective date of that regulation but was not equipped with antilock brakes, it may not be possible to bring it into compliance. The FMCSA stresses that the cost of bringing a CMV into compliance, or the cost to the user of not being able to operate a non-FMVSS-compliant CMV on U.S. highways, is a cost that would need to be borne in order to comply with existing Federal law. Once the vehicle is brought into compliance, and so labeled, the FMCSA requires no additional action on the motor carrier's part.

The FMCSA therefore certifies that this rule has no takings implications under the Fifth Amendment or Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999. The FMCSA has determined this proposed rule does not have a substantial direct effect on, or sufficient federalism implications for, the States, nor would it limit the policymaking discretion of the States.

These proposed changes to the FMCSRs would not directly preempt any State law or regulation. They would not impose additional costs or burdens on the States. Although the States are required to adopt part 393 as a condition for receiving Motor Carrier Safety Assistance Program grants, the additional training and orientation that would be required for roadside enforcement officials would be minimal, and it would be covered under the existing grant program. Also, this action would not have a significant effect on the States' ability to execute traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This proposed action would not involve an information collection that is subject to the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The Federal Motor Carrier Safety Administration (FMCSA) is a new administration within the Department of Transportation (DOT). The FMCSA is currently developing an agency order that will comply with all statutory and regulatory policies under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). We expect the draft FMCSA Order to appear in the **Federal Register** for public comment in the near future. The framework of the FMCSA Order is consistent with and reflects the procedures for considering environmental impacts under DOT Order 5610.1C. FMCSA has analyzed this proposal under the NEPA and DOT Order 5610.1C, and has issued a Finding of No Significant Impact (FONSI). The FONSI and the environmental assessment are in the docket to this proposal.

List of Subjects in 49 CFR Part 393

Highway and roads, Motor carriers, Motor vehicle equipment, Motor vehicle safety.

In consideration of the foregoing, the FMCSA proposes to amend title 49, Code of Federal Regulations, subchapter B, Chapter III, part 393 as follows:

PART 393—[AMENDED]

1. The authority citation for part 393 continues to read as follows:

Authority: Sec. 1041(b) of Public Law 102–240, 105 Stat. 1914; 49 U.S.C. 31136 and 31502; and 49 CFR 1.73.

2. Add § 393.8 to read as follows:

§ 393.8 Vehicle Manufacturer's Certification Label

(a) On or after [the effective date of the final rule], each commercial motor vehicle must have a label:

(1) Affixed by the vehicle manufacturer certifying that the vehicle was built to meet all applicable Federal Motor Vehicle Safety Standards (FMVSSs) (codified in 49 CFR part 571) in effect on the date of manufacture; or

(2) Affixed by a registered importer, as defined in 49 CFR part 592, certifying that the vehicle has been modified in order to conform with all applicable FMVSSs in effect on the date of manufacture.

(b) The certification labels required by this section must comply with the requirements of 49 CFR part 567.

(c) *Exception for Vehicles Operated by Canada and Mexico-based Motor Carriers Conducting Operations in the United States Before [effective date of the final rule].* Commercial motor vehicles added to a Canada or Mexico-based motor carrier's fleet on or after [effective date of the final rule], or introduced into service in the United States on or after that date, must comply with paragraphs (a) and (b) of this section. Commercial motor vehicles that are part of these carriers' existing fleets of vehicles operated in the United States before [effective date of the final rule] may be operated without a certification label that meets the requirements of 49 CFR part 567, until [date 24 months after the effective date of the final rule]. Such vehicles must still comply with all other requirements of part 393.

Issued on: March 7, 2002.

Joseph M. Clapp,

Administrator.

[FR Doc. 02–5893 Filed 3–14–02; 8:45 am]

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Federal Register

Tuesday,
March 19, 2002

Part VII

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 567

Retroactive Certification of Commercial Vehicles by Motor Vehicle Manufacturers; Proposed Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 567

[Docket No. NHTSA 02–11594; Notice 1]

RIN 2127–AI59

Retroactive Certification of Commercial Vehicles by Motor Vehicle Manufacturers

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Proposed policy statement; request for comments.

SUMMARY: NHTSA seeks comment on a draft policy statement. The policy is part of the Department of Transportation's efforts to ensure that the interests of safety are protected as the United States takes the steps necessary to comply with its obligations under the North American Free Trade Agreement regarding the access of Mexico-domiciled motor carriers to the United States.

The policy statement is being issued pursuant to the National Traffic and Motor Vehicle Safety Act of 1966, codified at 49 U.S.C. Chapter 301, which provides for the issuance of Federal Motor Vehicle Safety Standards (FMVSSs), requires all vehicles imported into the United States or introduced into interstate commerce to have been manufactured in compliance with those standards, and requires that a label bearing a statement certifying that compliance be attached to each vehicle. These requirements apply to new motor vehicles that vehicle manufacturers produce for sale in the United States. New or used motor vehicles imported into the United States that were not originally manufactured in compliance with all applicable FMVSSs must also be certified after they have been brought into compliance with those standards. NHTSA has long interpreted ''import'' to include bringing a commercial motor vehicle into the United States for the purpose of transporting cargo or passengers.

The policy statement addresses commercial motor vehicles that were not originally manufactured for sale in the United States, and thus were not required at the time of manufacture to be certified as complying with the FMVSSs, but are subsequently sought to be imported into the United States. The statement provides that a vehicle manufacturer may, if it has sufficient basis for doing so, retroactively apply a label to a commercial motor vehicle certifying that the vehicle complied with all applicable FMVSSs in effect at the time it was originally manufactured.

The purpose of this policy statement is to facilitate compliance by motor carriers domiciled in other countries, primarily those in Mexico and Canada, with the above statute and a companion notice of proposed rulemaking by the Federal Motor Carrier Safety Administration (FMCSA). In its document, FMCSA will be proposing to promote the effective enforcement of that statute by requiring that all commercial motor vehicles operating in the United States have labels certifying their compliance with the FMVSSs in effect when they were built. NHTSA has been advised that there are many commercial motor vehicles used by motor carriers in Mexico and Canada that were manufactured in accordance with the FMVSSs, but were not certified as complying with those standards because the vehicles were manufactured for sale in Canada or Mexico. In two separate documents, NHTSA will be proposing recordkeeping requirements for foreign manufacturers that retroactively certify vehicles, and proposing to codify its interpretation of the term ''import,'' as used in the statute, by incorporating that interpretation into its primary regulation concerning the importation of vehicles.

DATES: *Comment closing date:* You should submit your comments early enough to ensure that Docket Management receives them not later than May 20, 2002.

ADDRESSES: For purposes of identification, please mention the docket number of this document in your comments. You may submit those comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Alternatively, you may submit your comments by e-mail at *http://dms.dot.gov.*

You may call Docket Management at (202) 366–9324, or you may visit the Docket from 10 a.m. to 5 p.m., Monday through Friday. The Docket is located at the Plaza level of this building, northeast entrance.

FOR FURTHER INFORMATION CONTACT: *For technical issues:* Mr. George Entwistle, Chief, Equipment and Imports Division, Certification Branch, Office of Safety Assurance, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; telephone (202) 366–5291; telefax (202) 366–1024.

For legal issues: Ms. Rebecca MacPherson, Office of the Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; telephone (202) 366–2992; telefax (202) 366–3820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

A. NAFTA Provisions for Cross Border Operation of Commercial Motor Vehicles

On December 17, 1992, the United States, Canada and Mexico signed the North American Free Trade Agreement (NAFTA). Following Congressional approval, the Agreement entered into force on January 1, 1994.

Since 1982, a statutory moratorium in the United States on the issuance operating authority to Mexico-domiciled motor carriers had, with a few exceptions, limited the operations of such carriers to municipalities and commercial zones along the United States-Mexico border (''border zone''). Annex I of NAFTA called for liberalization of access for Mexico-domiciled motor carriers on a phased schedule. Pursuant to this schedule, Mexico-domiciled charter and tour bus operations were permitted beyond the border zone on January 1, 1994. Truck operations were to have been permitted in the four United States border states in December 1995, and throughout the United States on January 1, 2000; scheduled bus operations were to have been permitted throughout the United States on January 1, 1997.

Because of concerns about safety, the United States postponed implementation with respect to Mexico-domiciled truck and scheduled bus service and continued its blanket moratorium on processing applications

by these Mexico-domiciled motor carriers for authority to operate in the United States outside the border zone. On February 6, 2001, a NAFTA dispute resolution panel ruled that the blanket moratorium violated the United States' commitments under NAFTA.

B. Implementation of the NAFTA Provisions in a Manner Consistent With Safety

The Department of Transportation (DOT) is now preparing for the implementation of these NAFTA provisions. The Department's NHTSA and FMCSA are committed to taking the steps necessary to ensure that the NAFTA provisions are implemented in a manner consistent with the interests of safety.

1. NHTSA

While NHTSA does not have any enforcement authority over motor carriers, it does administer a statute that affects the operations in the United States of motor carriers domiciled in other countries. The statute requires that motor vehicles manufactured for sale in the United States or imported into the United States, i.e., vehicles that are driven on the public roads and highways of the United States, be manufactured so as to reduce the likelihood of motor vehicle crashes and of deaths and injuries when crashes do occur. That statute is the National Traffic and Motor Vehicle Safety Act of 1966 (''Vehicle Safety Act'') (codified as 49 U.S.C. 30101, *et seq.*).

One of the agency's most important functions under that Act is to issue and enforce the FMVSSs. Many of these standards specify safety performance requirements for motor vehicles, while others do so for items of motor vehicle equipment. Manufacturers of motor vehicles must certify compliance with all applicable safety standards and permanently affix a label to each vehicle stating that the vehicle complies with all applicable FMVSSs.[1]

The Vehicle Safety Act specifies that:

> A manufacturer or distributor of a motor vehicle or motor vehicle equipment shall certify to the distributor or dealer at delivery that the vehicle or equipment complies with the applicable motor vehicle safety standards prescribed under this chapter. A person may not issue a certificate if, in exercising reasonable care, the person has reason to know the certificate is false or misleading in a material respect. Certification of a vehicle must be shown by a label or tag permanently fixed to the vehicle.

(49 U.S.C. 30115.)

The Vehicle Safety Act further provides that, subject to specific exemptions,[2]

> a person may not manufacture for sale, offer to sell, introduce or deliver for introduction in interstate commerce, or import into the United States, any motor vehicle or motor vehicle equipment manufactured on or after the date an applicable motor vehicle safety standard * * * takes effect unless the vehicle or equipment complies with the standard and is covered by a certification issued under section 30115 of this title.

(49 U.S.C. 30112.)

Since 1975, NHTSA has interpreted this provision of section 30112 as applying to all vehicles entering the United States. In a letter from the NHTSA Administrator to the Canadian Trucking Association, the agency stated that commercial vehicles transporting cargo into and within the United States are imports within the context of 49 U.S.C. 30112 and must be certified.[3] Although the 1975 letter did not address the issue of Mexico-domiciled motor carriers, its rationale applied equally to those carriers.

In 1995, DOT publicized this interpretation in connection with its efforts to prepare for the implementation of NAFTA. DOT did so by incorporating the interpretation in a NAFTA Operating Requirements Handbook, which was printed in three languages and distributed to all participants at a North American Free Trade Agreement (NAFTA) conference held in San Antonio, TX on November 14–16, 1995. The handbook stated that all commercial vehicles entering the United States must have been manufactured in compliance with all applicable FMVSSs and must bear a label certifying such compliance. A list of the FMVSSs that are applicable to commercial motor vehicles, as well as a brief synopsis of those standards, may be found in the appendix to the preamble of this document. (We have placed a copy of the relevant portions of the Handbook in the docket for this document.)

Following the decision of the NAFTA panel in February of this year, NHTSA reviewed its 1975 interpretation. As noted below in the section on ''Companion NHTSA actions,'' after consulting with the Office of Regulations and Rulings of the United States Customs Service (USCS), NHTSA has reaffirmed that interpretation and is seeking public comment on codifying it in the Code of Federal Regulations.

2. FMCSA

FMCSA is the agency within the Department of Transportation that is responsible for oversight of commercial motor carriers. It regulates the operation of vehicles used to transport both cargo (primarily on heavy trucks and trailers) and passengers (primarily in heavy buses). Its regulations address both the commercial motor vehicles and drivers of those vehicles. The regulations also require commercial motor carriers, i.e., those businesses that engage in the transport of cargo or passengers, to meet specified operating requirements.

The condition of safety equipment and features on commercial motor vehicles is governed by 49 CFR Part 393, Parts and Accessories Necessary for Safe Operation. The Federal Motor Carrier Safety Regulations (FMCSRs) in Part 393 currently cross-reference most of the FMVSSs applicable to heavy trucks and buses. (Part 393 does not currently require that commercial motor vehicles have a FMVSS certification label.) The FMCSRs require that motor carriers operating in the United States, including Mexico-domiciled carriers, must maintain much of the safety equipment and features that NHTSA requires vehicle manufacturers to install.

Generally, enforcement of the FMVSSs incorporated in the FMCSRs by FMCSA and its Motor Carrier Safety Assistance Act grant partners is accomplished through roadside inspections. If the violations are discovered during a roadside inspection, a citation may be issued under Part 393 or conforming State laws and regulations. If violations are serious enough to meet the out-of-service criteria used in roadside inspections (i.e., the condition of the vehicle is likely to cause a crash or cause the vehicle to break down), the vehicle would be placed out of service until the necessary repairs are made. The roadside inspection procedure is the same for all commercial motor vehicles operated in the United States, regardless

[1] The Vehicle Safety Act requires that motor vehicle manufacturers certify the compliance of motor vehicles with the FMVSS before introducing them into interstate commerce, offering them for sale or selling them. Vehicles are not subject to pre-introduction, pre-offer, or pre-sale approval by NHTSA.

[2] For example, our regulations provide that exemptions may be issued for motor vehicles or items of motor vehicle equipment that are necessary for research, investigations, demonstration, training, competitive racing events, show, or display; vehicles being temporarily imported for personal use; and vehicles being temporarily imported by individuals who are attached to the military or diplomatic service of another country or to an international organization (49 CFR Part 591, Importation of Vehicles and Equipment Subject to Federal Safety, Bumper and Theft Prevention Standards.)

[3] See letter dated May 9, 1975 from NHTSA Administrator James B. Gregory to M. C. Carruth, Docket No. NHTSA–02–11594.

of the country in which a motor carrier is domiciled. The FMCSA also has the option of imposing civil penalties for violations of Part 393. Any violations of the FMVSSs that also constitute violations of Part 393 could subject motor carriers to a maximum civil penalty of up to $10,000 per violation. FMCSA has the statutory authority to prohibit the operation of commercial motor vehicles by motor carriers that fail to pay civil penalties for violations of the FMCSRs.

If the FMCSA determines that a Mexico-domiciled carrier is operating vehicles that do not comply with the applicable FMVSSs, this information could be used to take appropriate enforcement action against the carrier for making a false certification on its application under 49 CFR Part 365, Rules Governing Applications for Operating Authority, for a Certificate of Registration or operating authority. Such action could include suspension or even revocation of such registration or authority.

FMCSA is issuing four final rules to ensure that the interests of safety are protected in granting authority for Mexico-domiciled motor carriers to operate within the United States. Two of the final rules revise FMCSA's regulations and the forms governing applications by those carriers for such authority. The forms require additional information about each applicant's business and operating practices to help FMCSA to determine if the applicant is capable of meeting the safety requirements established for operating in interstate commerce in the United States. Among other things, a carrier must certify on its application form that its vehicles were manufactured in compliance with the applicable FMVSSs. The third final rule, being issued on an interim basis, establishes a safety monitoring system and compliance initiative to further aid FMCSA in determining whether Mexico-domiciled carriers applying to operate anywhere in the United States have the capability to comply with applicable safety regulations and conduct safe operations. The fourth final rule, also being issued on an interim basis, establishes procedures to certify and maintain certification for auditors and investigators.

II. FMCSA Proposal To Require All Commercial Motor Vehicles Have a FMVSS Certification Label

FMCSA is taking steps to help enforce the prohibition against importing into this country motor vehicles that do not have labels certifying their compliance with the FMVSSs. Specifically, FMCSA is proposing to amend Part 393 to require that all commercial motor vehicles operating within the United States, including those operated by Canada- and Mexico-domiciled carriers, bear a FMVSS certification label. As with all existing requirements in Part 393, the new requirement would apply to all commercial motor vehicles engaged in transporting passengers or cargo in the United States, regardless of where they are domiciled. If Part 393 is ultimately amended to include a requirement that each commercial motor vehicle have a FMVSS certification label, civil penalties could be assessed against a motor carrier operating a vehicle without a FMVSS certification label. However, FMCSA would not place a commercial motor vehicle out of service solely because it lacks a FMVSS certification label, since such a violation would not meet the out-of-service criteria established by that agency.

III. NHTSA Draft Policy Statement on Retroactive Certification of Commercial Motor Vehicles With the FMVSSs

NHTSA has been advised that many of the vehicles currently operated by Mexico- and Canada-domiciled motor carriers may meet all applicable FMVSSs even if they were manufactured for use in Mexico and Canada and thus were not required to, and do not, bear a FMVSS certification label. In general, these are vehicles that were built at the same assembly plants and according to the same design specifications as vehicles manufactured for sale in the United States and certified to the FMVSSs. They may bear a label certifying compliance to Canadian standards or, in the instance of vehicles manufactured for the Mexican market, may bear no certification label at all. If these vehicles were manufactured to comply with the FMVSSs, they could be as safe as vehicles manufactured for sale in the United States. Nevertheless, it would be a violation of the Vehicle Safety Act to bring these vehicles into the United States because they do not bear a FMVSS certification label.

The agency already has an informal policy in place that addresses a similar situation. Since 1999, NHTSA has allowed, in certain circumstances, Canadian vehicle manufacturers to place certification labels retroactively on previously leased passenger cars and light trucks that would have met all applicable FMVSSs after minor modifications, such as changing the odometer from mph to km/h. These leased vehicles were essentially identical to ones manufactured for sale in the United States by the same manufacturers.

We note that only those manufacturers that have produced vehicles for sale in the United States are likely to have generated the type of data and analysis necessary to enable them to certify their vehicles to the FMVSSs, whether contemporaneously or retroactively.

NHTSA and FMCSA representatives met with representatives of the Mexican and Canadian governments, and Mexican manufacturers and trucking industry associations, in Mexico City on June 20, 2001. NHTSA and FMCSA were told then by Mexican vehicle manufacturers that many Mexican commercial vehicles built since 1994 were built in conformity with applicable FMVSSs. NHTSA was advised that of the approximately 400,000 trucks and buses that operate on the Federal roads in Mexico, about 130,000 may comply with all applicable FMVSSs. Most of these 130,000 trucks and buses, however, do not have a FMVSS certification label because it is not required for vehicles manufactured for sale in Mexico.

NHTSA, FMCSA, USCS, the Environmental Protection Agency and Transport Canada conducted a follow-up seminar in Mexico on August 2–3, 2001, to tell representatives of Mexican vehicle manufacturers and the motor carrier industry about the requirements of the United States. During the seminar, the Mexican vehicle manufacturers indicated that they would consider affixing a certification label retroactively, depending on the results of their review of vehicle test data, and on their ability to make a determination that a particular vehicle or group of vehicles met all applicable FMVSSs in effect on the date of manufacture.

NHTSA tentatively concludes that extending the agency's policy on retroactive certification to vehicles that are engaged in the transport of goods or passengers across Canadian or Mexican borders would facilitate the compliance of Mexico- and Canada-domiciled motor carriers with the requirement for operating FMVSS-certified vehicles in the United States, without any adverse effects on safety, while also helping the United States to meet its obligations under NAFTA. Absent such an extension, Mexico- and Canada-domiciled carriers could not use any of their existing vehicles lacking a FMVSS certification label in the United States, even those that complied with the FMVSSs at the time of their manufacture.

Under NHTSA's draft policy statement, a manufacturer wishing to certify a commercial motor vehicle retroactively and affix a FMVSS certification label to that vehicle would have to assure itself that the vehicle did, in fact, comply with all applicable FMVSSs in effect at the time of original manufacture or that it could be readily modified so that the vehicle, as modified, would have met the standards in effect at the time the vehicle was originally manufactured.

In order to certify compliance retroactively, it is likely that the manufacturer would engage in a multi-step evaluation process. In most, if not all, cases, it would need to identify a substantially similar vehicle (''paired vehicle'') that it certified, at the time of manufacture, as complying with all applicable FMVSSs and then determine whether there are any design, production, or other differences between the paired vehicle and the candidate vehicle. This determination would likely include an assessment of whether the component parts of the two vehicles are substantially similar. A manufacturer would then need to determine whether any of those differences preclude the candidate vehicle from being in compliance with all applicable FMVSSs. If modifications were needed to bring the vehicle into compliance with applicable FMVSSs, the manufacturer would have to make those modifications. Likewise, if either NHTSA or the manufacturer had decided, subsequent to the certification of the paired vehicle, that that vehicle did not comply with one or more applicable FMVSSs, the manufacturer would have to correct any similar noncompliances in the candidate vehicle before certifying compliance.

Once the evaluation process is complete and the manufacturer has made any necessary repairs or modifications, it may apply the retroactive certification label to the commercial motor vehicle. The label must be applied by the manufacturer because the certification responsibility belongs to the vehicle manufacturer under the Vehicle Safety Act. The label cannot be applied by other parties such as owner, lessee, or operator of the vehicle. The label must meet the requirements of Part 567. It must state the month and year of original manufacture of the vehicle. It must also state the month and year in which it was affixed to the vehicle.

NHTSA anticipates that the need for retroactive certification of commercial vehicles will eventually disappear. The expanded policy is intended to be a short-term solution to a short-term problem. In the long run, the simplest course of action for Mexico- and Canada-domiciled motor carriers would be to buy or lease vehicles certified at the time of manufacture as complying with all applicable FMVSSs. Likewise, the simplest course of action for Mexican and Canadian vehicle manufacturers would be to place FMVSS certification labels on any FMVSS compliant vehicles at the time of manufacture even if they are not certain whether the vehicles will be used in cross-border operations. NHTSA believes that manufacturers will quickly be able to determine whether vehicles they are currently manufacturing comply with all applicable FMVSS, and to bring them into compliance promptly if they are not. Thus, the opportunity under the expanded policy to certify commercial vehicles retroactively would be limited to vehicles manufactured before August 31, 2002. Additionally, NHTSA believes manufacturers do not need an unlimited amount of time to determine whether existing vehicles complied with all applicable safety standards in effect at the time of manufacture. Likewise, motor carriers do not need an unlimited amount of time to determine whether they need to request a manufacturer to retroactively certify a particular vehicle. Accordingly, NHTSA is proposing to terminate this policy of allowing retroactive certification for commercial vehicles on September 1, 2005.

If a motor carrier wishes to use a heavy truck or bus manufactured after August 31, 2002 in its operations within the United States, the vehicle would be required to comply with the applicable FMVSS and have a FMVSS certification label applied by the vehicle manufacturer at the time of manufacture. If the carrier does not intend to operate the vehicle in the United States, then there would, of course, be no requirement that the vehicle bear a FMVSS certification label.

Vehicle manufacturers would not be required to retroactively certify the compliance of a motor vehicle and in many instances would be unable to do so. This inability would stem from the fact that the certification of a vehicle would in most, if not all, cases be based on data that the manufacturer generated at the time the vehicle was originally built. As a practical matter, only those manufacturers that produced and certified substantially similar vehicles for sale in the United States at the same time that the non-certified vehicle was manufactured are likely to have generated this information.

Should a vehicle manufacturer decline to certify a motor carrier's vehicle retroactively, the carrier may be able to have the vehicle certified by a registered importer. An individual or business registered with NHTSA as a registered importer under 49 CFR Part 592, Registered Importers of Vehicles Not Originally Manufactured to Conform to the Federal Motor Vehicle Safety Standards, may import non-complying motor vehicles into the United States. However, a registered importer may do so only if NHTSA has determined under 49 CFR Part 593, Determinations that a Vehicle Not Originally Manufactured to Conform to the Federal Motor Vehicle Safety Standards is Eligible for Importation, that the vehicles are capable of being readily altered to comply with all applicable standards in effect at the time the vehicle is imported. As of this date, NHTSA has not made any such determination regarding any vehicle that would be covered by the draft policy statement.

Furthermore, the registered importer must provide the Federal Government with a bond equal to 1.5 times the dutiable value of the vehicle before it can be imported and must bring the vehicle into full compliance before any vehicle may be sold or released for highway use and the bond released. For detailed information on NHTSA's registered importer program, please refer to *http://www.nhtsa.dot.gov/cars/rules/maninfo/.*

IV. Companion NHTSA Actions

As noted above, in two separate documents, NHTSA will be proposing recordkeeping requirements for manufacturers that retroactively certify vehicles, and to codify its interpretation of the term ''import,'' as used in the Vehicle Safety Act. The first document will propose requiring that manufacturers that retroactively certify their vehicles maintain information sufficient to identify those vehicles. This information would include any vehicle identification number (VIN) on each vehicle, or comparable information if the vehicle does not have a VIN. The other document will discuss the basis for our 1975 interpretation of the term ''import'' as including bringing commercial vehicles into the United States for the purpose of transporting cargo or passengers, and propose to codify that interpretation in Part 591.

V. Request for Comments

This draft policy statement is not subject to the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b)(A)).

Nevertheless, NHTSA is seeking public comment on the draft statement before publishing a final version.

(1) Please comment on whether a termination date of August 31, 2005 would provide sufficient time to accommodate the needs of the Mexico- and Canada-domiciled motor carriers.

(2) Please comment on whether retroactive certification should be permitted in instances in which the vehicle must be modified significantly, such as modifications that would entail additional testing by the manufacturer to assure that the vehicle, as modified, would have complied with the FMVSSs in effect when the vehicle was originally manufactured.

VI. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this draft policy statement under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This draft policy statement was not reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' This action is not ''significant'' under the Department of Transportation's regulatory policies and procedures.

This draft policy statement would not mandate compliance with any new requirements or the expenditure of any resources. Instead, it would facilitate compliance with the requirement in the Vehicle Safety Act for imported vehicles to be certified as complying with all applicable FMVSS and with a proposal that FMCSA will issue to require that all commercial motor vehicles operating in the United States to be so certified.

B. Regulatory Flexibility Act

NHTSA has considered the effects of this draft policy statement under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. The statement would primarily affect manufacturers of motor vehicle, and secondarily affect motor carriers. Few motor vehicle manufacturers qualify as small businesses.

The Small Business Administration's regulations define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR part 121.105(a)) SBA's size standards are organized according to Standard Industrial Classification Codes (SIC). SIC Code 3711 ''Motor Vehicles and Passenger Car Bodies'' has a small business size standard of 1,000 employees or fewer. SIC Code 3714 ''Motor Vehicle Parts and Accessories'' has a small business size standard of 750 employees or fewer.

As noted above, this draft policy statement would not mandate compliance with any new requirements or the expenditure of any resources. Instead, it would facilitate compliance with the requirement in the Vehicle Safety Act for imported vehicles to be certified as complying with all applicable FMVSS and with a proposal that FMCSA will issue to require that all commercial motor vehicles operating in the United States to be so certified.

C. National Environmental Policy Act

NHTSA has analyzed this draft policy statement for the purposes of the National Environmental Policy Act and determined that it would not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

The agency has analyzed this draft policy statement in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it would not have sufficient Federal implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The statement would not have any substantial impact on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

E. Unfunded Mandates Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation with base year of 1995). Adjusting this amount by the implicit gross domestic product price deflator for the year 2000 results in $109 million (106.99/98.11=1.09). The assessment may be included in conjunction with other assessments.

This draft policy statement would not mandate any expenditures by State, local or tribal governments.

VII. Submission of Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

On that page, click on ''search.''

On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were ''NHTSA–1998–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''

On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

Appendix to Preamble—FMVSS Applicable to Commercial Motor Vehicles

The following table sets forth the FMVSSs that are applicable to heavy trucks, heavy buses (other than school buses), and trailers. A brief synopsis of each standard is presented after the table. All three vehicle classifications apply to vehicles with a gross vehicle weight rating greater than 4,536 kg. While there may be some commercial motor vehicles that are not classified as a heavy truck, heavy bus, or trailer, the vast majority of commercial motor vehicles will fit into one of these categories.

FMVSS	Title	Heavy trucks	Heavy buses	Trailers
101	Controls and displays	yes	yes	no.
102	Transmission shift lever device	yes	yes	no.
103	Windshield defrosting and defogging	yes	yes	no.
104	Windshield wiping and washing	yes	yes	no.
105	Hydraulic and electric brake systems	yes *	yes*	no.
106	Brake hoses	yes	yes	yes.
108	Lamps, reflective devices, and associated equipment	yes	yes	yes.
111	Rearview mirrors	yes	yes	no.
113	Hood latch systems	yes	yes	no.
116	Hydraulic brake fluids	yes *	yes *	yes.
119	New pneumatic tires for vehicles other than passenger cars	yes	yes	yes.
120	Tire selection and rims for vehicles other than passenger cars	yes	yes	no.
121	Air brake systems	yes**	yes**	yes. **
124	Accelerator control systems	yes	yes	no.
205	Glazing materials	yes	yes	no.
206	Door locks and retention systems	yes	no	no.
207	Seating systems	yes	yes	no.
208	Occupant crash protection	yes	yes	no.
209	Seat belt assemblies	yes	yes	no.
210	Seat belt assembly anchorages	yes	yes	no.
217	Bus emergency exits and window retention	no	yes	no.
223	Rear impact guards	no	no	yes.
224	Rear impact protection	no	no	yes.
302	Flammability of interior materials	yes	yes	no.
304	CNG tanks	yes++	yes++	no.

*If equipped with hydraulic brakes.
**If equipped with air brakes.
++If engine is powered by CNG.

Synopsis of FMVSSs Applicable to Heavy Trucks, Buses and Trailers

FMVSS No. 101, Controls and Displays

Effective date: September 1, 1972.

Recent amendments: None.

Requirements for new heavy trucks and buses:

Equipment: If equipped with a control listed in the standard, shall meet the requirements for the location, identification, and illumination of the control. No requirements exist for displays, e.g., hazard warning telltale. Examples of controls: Turn signal, windshield defroster, and heating and air conditioning system.

Location: Controls must be operable by the driver wearing his/her seat belt.

Identification: Symbol, if listed in the standard; wording if stated in the standard.

Illumination: For the controls listed in the standard with some exceptions, e.g., controls that are foot operated or located on the floor, floor console, or steering column, or in the windshield header area. Brightness must be adjustable.

FMVSS No. 102, Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect

Effective date: September 1, 1968.

Recent amendments: None.

Requirements for new heavy trucks and buses:

Equipment: If equipped with an automatic transmission, must have a transmission braking effect, starter interlock, and identification of shift lever positions. If equipped with a manual transmission, must identify the shift pattern. Automatic transmission shift lever identification: The position selected, e.g., drive, and other positions, e.g., neutral, in front of and in clear view of the driver. Manual transmission shift pattern: All except 3-speed, H pattern, in driver's view.

FMVSS No. 103, Windshield Defrosting and Defogging Systems

Effective date: January 1, 1968.

Recent amendments: None.

Requirements for new heavy trucks and buses:

Equipment: A defrosting and defogging system.

FMVSS No. 104, Windshield Wiping and Washing Systems

Effective date: January 1, 1968.

Recent amendments: None.

Requirements for new heavy trucks and buses:

Equipment: Power driven windshield wipers and washer system.

FMVSS No. 105, Hydraulic and Electric Brake Systems

Effective date: September 1, 1983.

Recent amendments: Brakes must have automatic adjustment, October 20, 1993.

Antilock brake system equipment requirement, effective March 1, 1999.

Requirements for new heavy trucks and buses:

Equipment: Service brakes on all wheels, automatic adjusters (drum type brakes), and an antilock brake system that directly controls the wheels of at least one front and rear axle.

FMVSS No. 106, Brake Hoses

Effective date: January 1, 1968.

Recent amendments: None.

Requirements for new heavy trucks, trailers, and buses:

Equipment: Aftermarket hoses must be labeled according to the standard.

FMVSS No. 108, Lamps, Reflective Devices, and Associated Equipment

Effective date: January 1, 1968.

Recent amendments: Conspicuity systems: trailers must be equipped with retroreflective sheeting and/or reflectors, December 1, 1993; truck tractors, July 1, 1997.

Requirements for new heavy trucks, trailers, and buses:

Equipment: As shown in the wall poster, the lamps, reflective devices, and associated equipment, e.g., retroreflective strips and/or reflex reflectors for the rear of trailers and truck tractors and the side of trailers, must be located as specified in the standard.

FMVSS No. 111, Rearview Mirrors

Effective date: January 1, 1968.

Recent amendments: None.

Requirements for new heavy trucks and buses:

Equipment: Outside mirrors of unit magnification, each with not less than 323 sq cm of reflective surface, on both sides of the vehicle, adjustable both in the horizontal and vertical directions to view the rearward scene.

FMVSS No. 113, Hood Latch Systems

Effective date: January 1, 1969.

Recent amendments: None.

Requirements for new heavy trucks and buses:

Equipment: Each hood must have a hood latch system; a front opening hood that could obstruct the driver's view must have a second latch.

FMVSS No. 116, Hydraulic Brake Fluid

Effective date: January 1, 1968.

Recent amendments: None.

Requirements for new heavy trucks, buses, and trailers, if equipped with hydraulic brakes:

Equipment: Fluid used in these vehicles must have been manufactured and packaged according to the requirements in the standard.

FMVSS No. 119, New Pneumatic Tires for Vehicles Other Than Passenger Cars.

Effective date: March 1, 1975.

Recent amendments: None.

Requirements for new heavy trucks, trailers, and buses:

Equipment: Tires on these vehicles must have required markings, e.g., the symbol DOT certifying that the tire complies with applicable FMVSS, tire identification number, tire size designation, maximum load rating and corresponding inflation pressure, any speed restriction, the number of plies and ply composition, the words ''tubeless'' or ''tube type,'' ''regroovable,'' and ''radial,'' as applicable, and the letter designating load range.

FMVSS No. 120, Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars

Effective date: August 1, 1976.

Recent amendments: None.

Requirements for heavy trucks, trailers, and buses:

Equipment: Sum of tire load ratings of tires on an axle must be equal to or greater than the axle's GAWR; rims must be permanently marked including size, e.g., 20 x 5.5 (inches) and DOT; a label on the vehicle must display, for each axle, a tire size and inflation pressure appropriate for the GAWR.

FMVSS No. 121, Air Brake Systems

Effective date: January 1, 1975; **Note:** stopping distance requirements rescinded effective August 9, 1979, but reinstated as shown below.

Recent amendments:

Equipment: Brakes must have automatic adjustment, October 20, 1994. Antilock brake system including malfunction indicator required for truck tractors, March 1, 1997, and for trucks and buses, March 1, 1998. Vehicles that tow another air-braked vehicle shall have an electrical circuit for the other vehicle's ABS. Towing vehicles shall have an electrical circuit for indicating a malfunction in the other vehicle's ABS, March 1, 2001. ABS on trailers and malfunction signal, March 1, 1998, and external malfunction indicator lamp, from March 1, 1998 through end of February 2009.

Requirements for new heavy trucks and buses:

Equipment: Compressor, reservoirs, towing vehicle protection, pressure gauge, warning signal, ABS with malfunction indicator, brakes on all wheels, automatic brake adjustment with indicator.

Requirements for new trailers with air brakes:

Equipment: Reservoirs, ABS with malfunction signal and external lamp, brakes on all wheels, automatic brake adjustment with indicator.

FMVSS No. 124, Accelerator Control Systems

Effective date: September 1, 1993.

Recent amendments: None.

Requirements for new heavy trucks and buses:

Equipment: At least two sources of energy returning throttle to idle.

FMVSS No. 205, Glazing Materials

Effective date: January 1, 1968.

Recent amendments: None.

Requirements for new heavy trucks and buses:

Equipment: Must be labeled as to type, e.g., windshields must be marked ''AS–1.''

FMVSS No. 206, Door Locks and Door Retention Components

Effective date: January 1, 1972.

Recent amendments: None.

Requirements for new heavy trucks:

Equipment: Side doors must have a fully latched and a secondary latched position.

FMVSS No. 207, Seating Systems

Effective date: January 1, 1972.

Recent amendments: None.

Requirements for new heavy trucks (all seating positions) and buses (driver's seat only):

Equipment: Vehicle must have a driver's seat; a hinged or folding seat must have a self-locking device.

FMVSS No. 208, Occupant Crash Protection

Effective date: January 1, 1972.

Recent amendments: None.

Requirements for heavy trucks (all seats) and buses (driver's seat only):

Equipment: Each seat shall be equipped with a Type 1 (lap) or Type 2 (lap and shoulder) seat belt assembly that conforms to FMVSS 209. Seat belt assembly includes either an emergency locking retractor or automatic locking retractor. If an automatic locking retractor is used on a suspension seat, it must be attached to the seat structure.

FMVSS No. 209, Seat Belt Assemblies

Effective date: March 1, 1967.

Recent amendments: None.

Requirements for new heavy trucks and buses:

Equipment: Each seat belt assembly shall be for use by one person and must be adjustable to fit a range of occupant sizes from 5th percentile females to 95th percentile males; labeled as to date of manufacture, model No., and trademark of manufacturer, distributor, or importer.

FMVSS No. 210, Seat Belt Assembly Anchorages

Effective date: July 1, 1971.

Recent amendments: None.

Requirements for new heavy trucks (all seating positions) and buses (driver's seat only):

Equipment: Anchorages located in the vehicle must be within the dimensions and angles stated in the standard, referenced from the seating reference point; anchorages for each seat belt assembly shall be at least 165 mm apart.

FMVSS No. 217, Bus Emergency Exits and Window Retention and Release

Effective date: September 1, 1973.

Recent amendments: None.

Requirements for new heavy buses other than school buses:

Equipment: Total emergency exit area (unobstructed openings for emergency exits) in sq cm must be at least 432 times the number of designated seating positions on the bus; at least 40 percent of the total area shall be on each side of the bus; no single exit is credited with more than 3,458 sq cm; each bus shall have a rear exit unless the bus configuration precludes one, then the bus shall have a roof exit in the rear half of the bus; emergency exits can have one or two release mechanisms, and at least one must be operated in a different direction from the motion to open the exit by 90–180 degrees; each exit shall be labeled emergency exit or emergency door and provide operating instructions.

FMVSS No. 223, Rear Impact Guards

Effective date: January 26, 1998.
Recent amendments: None.
Requirements for new trailers:
Equipment: Guard shall be permanently labeled, e.g., manufacturer's name and address, month and year of manufacture, and must be certified by the symbol DOT, and located as specified in the standard; installation instructions shall be provided specifying the vehicles on which it can be installed and the method to properly install it.

FMVSS No. 224, Rear Impact Protection

Effective date: January 26, 1998.
Recent amendments: None.
Requirements for new trailers:
Equipment: Rear impact guard meeting FMVSS 223 shall be installed. Location and dimensional requirements are specified. Some trailers are excluded.

FMVSS No. 302, Flammability of Interior Materials

Effective date: September 1, 1972.
Recent amendments: None.
Requirements for new heavy trucks and buses:
Equipment: Any single or composite material located within 13 mm of the occupant compartment air space shall meet performance requirements.

FMVSS No. 304, Compressed Natural Gas Fuel Container Integrity

Effective date: March 27, 1995.
Recent amendments: None.
Requirements for new heavy trucks and buses if operated using CNG:
Equipment: Each CNG fuel container shall be labeled with the manufacturer's name, address, and telephone number, month and year of manufacture, service pressure, and other informational statements. It must also be certified with the symbol DOT.

List of Subjects in 49 CFR Part 567

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR Part 567 as follows:

PART 567—CERTIFICATION

1. The authority citation for Part 567 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166, 32502, 32504, 33101–33104, and 33109; delegation of authority at 49 CFR 1.50.

2. Add Appendix A to 49 CFR Part 567 to read as follows:

Appendix A to Part 567—Statement of Policy: Retroactive Certification of Commercial Motor Vehicles

I. *Agency policy on retroactive certification.* It is the policy of the National Highway Traffic Safety Administration to allow a vehicle manufacturer to retroactively apply a label to a used commercial motor vehicle that it originally manufactured, certifying the compliance of that motor vehicle with all applicable Federal motor vehicle safety standards that were in effect when the vehicle was originally manufactured.

II. *Application.* This policy applies to commercial motor vehicles that were manufactured for sale in Mexico or Canada before August 31, 2002 and were not certified at the time that they were originally manufactured as complying with all applicable Federal motor vehicle safety standards. Any commercial motor vehicle certified pursuant to this policy statement must be certified on or before August 31, 2005.

III. *Conditions.* A vehicle manufacturer may retroactively certify the compliance of a commercial motor vehicle with the Federal motor vehicle safety standards if the manufacturer meets the following conditions:

A. Determines that the vehicle complied with all applicable Federal motor vehicle safety standards in effect at the time the vehicle was originally manufactured, or has been modified such that it complies with those standards.

B. Affixes a certification label meeting the requirements of 49 U.S.C. § 30115 and 49 CFR Part 567. Such label shall state the month and year of original manufacture and the month and year of the retroactive certification.

C. Maintains any records required by NHTSA in 49 CFR Part 576, Subpart B.

D. Provides, upon request, any records required by 49 CFR Part 576, Subpart B.

Issued on: March 6, 2002.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 02–5897 Filed 3–14–02; 8:45 am]

BILLING CODE 4910–59–P

Federal Register

Tuesday,

March 19, 2002

Part VIII

Department of Transportation

National Highway and Traffic Safety Administration

49 CFR Part 576

Recordkeeping and Record Retention; Proposed Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 576

[Docket No. NHTSA 02–11592; Notice 1]

RIN 2127–AI60

Recordkeeping and Record Retention

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This is one of three documents that NHTSA is issuing as part of efforts by the United States to comply with its obligations under the North American Free Trade Agreement (NAFTA) regarding the access of Mexican-domiciled motor carriers to the United States. The first NHTSA document is a draft policy statement allowing fabricating manufacturers to retroactively certify vehicles they originally manufactured for sale in countries other than the United States. The purpose of the proposed policy statement is to facilitate compliance by Mexico- and Canada-domiciled motor carriers with the National Traffic and Motor Vehicle Safety Act of 1966, recodified at 49 U.S.C. Chapter 301, which provides for the issuance of Federal motor vehicle safety standards (FMVSSs), requires the compliance of motor vehicles (including imported motor vehicles) with those standards, and requires that a label bearing a statement certifying that compliance be attached to each vehicle. The draft policy statement also facilitates compliance with a companion notice of proposed rulemaking by the Federal Motor Carrier Safety Administration (FMCSA). In its document, FMCSA will be proposing to promote the effective enforcement of NHTSA's statute by requiring that all commercial motor vehicles operating in the United States have labels certifying their compliance with the FMVSSs.

The second NHTSA document proposes an amendment that would define the term ''import,'' as used in the statute. In 1975, NHTSA issued an interpretation stating that the importation prohibition applies to the bringing into the United States of foreign-domiciled commercial vehicles that transport cargo. We are proposing a definition of the term ''import'' that would codify this interpretation in the Code of Federal Regulations.

This third document proposes to require vehicle manufacturers who retroactively apply compliance certification labels to make and retain records identifying the vehicles they have so certified.

DATES: *Comment closing date:* You should submit your comments early enough to ensure that Docket Management receives them not later than May 20, 2002.

ADDRESSES: For purposes of identification, please mention the docket number of this document in your comments. You may submit those comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC, 20590. Alternatively, you may submit your comments by e-mail at http://dms.dot.gov.

You may call Docket Management at (202) 366–9324, or you may visit the Docket from 10:00 a.m. to 5:00 p.m., Monday through Friday. The Docket is located at the Plaza level of this building, northeast entrance.

FOR FURTHER INFORMATION CONTACT:

For technical issues: Mr. George Entwistle, Chief, Equipment and Imports Division, Certification Branch, Office of Safety Assurance, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590; telephone (202) 366–5291; telefax (202) 366–1024.

For legal issues: Ms. Rebecca MacPherson, Office of the Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; telephone (202) 366–2992; telefax (202) 366–3820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

A. NAFTA Provisions for Cross Border Operation of Commercial Motor Vehicles

On December 17, 1992, the United States, Canada and Mexico signed the North American Free Trade Agreement (NAFTA). Following approval by Congress, NAFTA entered into force on January 1, 1994.

Since 1982, a statutory moratorium in the United States on the issuance of operating authority to Mexico-domiciled motor carriers had, with a few exceptions, limited the operations of such carriers to municipalities and commercial zones along the United States-Mexico border (''border zone''). Annex I of NAFTA called for liberalization of access for Mexico-domiciled motor carriers on a phased schedule. Pursuant to this schedule, Mexico-domiciled charter and tour bus operations were to have been permitted beyond the border zone on January 1, 1994. Truck operations were to have been permitted in the four United States border states in December 1995, and throughout the United States on January 1, 2000; scheduled bus operations were to have been permitted throughout the United States on January 1, 1997.

Because of concerns about safety, the United States postponed implementation of NAFTA with respect to Mexico-domiciled truck and scheduled bus service and continued its blanket moratorium on processing applications by Mexico-domiciled motor carriers for authority to operate in the United States outside the border zone. On February 6, 2001, a NAFTA dispute-resolution panel ruled that the blanket moratorium violated the United States' commitments under NAFTA.

B. Steps To Provide for the Safe Implementation of the NAFTA Provision for Cross Border Operation of Commercial Motor Vehicles

The Department of Transportation (DOT) is now preparing for the implementation of NAFTA's provisions for cross border operation of commercial motor vehicles. However, in doing this, the Department must assure that cross border operation of commercial vehicles will be conducted in a safe manner. To that end, NHTSA and FMCSA are issuing a series of notices.

NHTSA is issuing its series of notices under 49 U.S.C. 30101 *et seq.* (Vehicle Safety Act). The purpose of the Act is to reduce the number of motor vehicle crashes and deaths and injuries resulting from such crashes.

One of NHTSA's primary concerns under the Vehicle Safety Act is to ensure that the vehicles operated in the United States by Mexico-domiciled motor carriers were manufactured or modified to comply with the Federal motor vehicle safety standards (FMVSSs) issued under that Act that were in effect at the time the vehicles were manufactured.

The Vehicle Safety Act specifies that, subject to certain exemptions:[1]

[1] For example, our regulations provide that exemptions may be issued for motor vehicles or items of motor vehicle equipment that are necessary

A person may not manufacture for sale, offer to sell, introduce or deliver for introduction in interstate commerce, or *import into the United States,* any motor vehicle or motor vehicle equipment manufactured on or after the date an applicable motor vehicle safety standard. * * * takes effect unless the vehicle or equipment complies with the standard and is covered by a certification issued under section 30115 of this title.

(49 U.S.C. 30112; emphasis added.)

Thus, in general, the FMVSSs apply to new motor vehicles that vehicle manufacturers manufacture for sale in the United States. They also apply to new or used motor vehicles that anyone presents for importation into the United States, whether for sale, resale or other purposes. This includes all motor carriers, regardless of where they are domiciled. The Vehicle Safety Act also requires manufacturers to certify that their vehicles comply with all applicable safety standards.[2] The vehicles must bear a permanent label that is affixed by the vehicle manufacturer that certifies that the vehicles, at the time of manufacture, complied with all applicable safety standards.[3] 49 U.S.C. 30115.

As discussed in the draft policy statement that is a companion to this document, NHTSA has had a policy of allowing fabricating vehicle manufacturers to retroactively certify their vehicles in limited circumstances. The agency believes that extending that policy to vehicles that are engaged in the transport of goods or passengers in interstate commerce across the Canadian or Mexican borders is the best way to ensure the safety of the driving public while also meeting our treaty obligations. Accordingly, NHTSA is requesting comment on the policy of allowing fabricating manufacturers of vehicles produced for sale in Mexico or Canada that do not have a U.S. certification label to apply such labels retroactively to vehicles if they complied with all applicable U.S. standards in effect at the time of original manufacture.[4] The proposed policy statement would be limited to commercial motor vehicles manufactured on or before August 31, 2002 and would require that they be retroactively certified by September 1, 2005.

We are proposing in this document to require vehicle manufacturers to make and retain a list identifying all commercial vehicles to which they retroactively affix a certification label. We believe this is appropriate because of the risk that unauthorized parties could apply a certification label in an effort to allow non-compliant vehicles to be imported into the United States. Only fabricating vehicle manufacturers and, subject to the requirements of 49 U.S.C. 30141 and 49 CFR part 591, registered importers may retroactively certify compliance with the FMVSS. The proposed list would provide a means to check whether a particular retroactive certification label has been affixed by a fabricating vehicle manufacturer.

The manufacturer would be required to maintain a list of its retroactively certified vehicles, identified by the vehicle identification number (VIN), or if the vehicle does not have a VIN that meets the requirements of 49 CFR part 565, with alternative information that uniquely identifies each vehicle, including the vehicle make, model, and year. We are also proposing to require the manufacturers to record the month and year of original manufacture of each vehicle to which it has retroactively applied a certification label and the month and year in which the retroactive certification label was affixed. Manufacturers would be required to maintain these records for five years after the date on which the retroactive certification label was affixed.

This rule would not apply to registered importers. Rather, registered importers would be required to meet all the applicable conditions of 49 U.S.C. 30141, *et seq.* and 49 CFR part 591. NHTSA does not intend this series of rulemakings to affect how the registered importer program currently operates.

Only those fabricating manufacturers who decide to retroactively affix certification labels to one or more vehicles would be subject to the proposed recordkeeping and retention requirements. Vehicle manufacturers are not required to retroactively certify compliance and in many instances will be unable to do so. This is because many vehicles manufactured for sale in Mexico did not comply with all applicable FMVSSs at the time of original manufacture and cannot be readily modified by the manufacturer to comply with those standards. As a practical matter, only those manufacturers who produced and certified substantially similar vehicles for sale in the United States at the same time that the non-certified vehicle was manufactured would likely be able to certify a vehicle retroactively, since only those manufacturers would have the information needed to assure that the vehicle in fact complied.

We are not proposing to require these manufacturers to retain the factual and analytical information that they rely on to certify compliance. Currently, we do not require any certifying manufacturer to do so. However, it is in their best interest to retain that information in the event that an issue arises as to whether a vehicle complied with an applicable safety standard. Although manufacturers of vehicles sold in the United States develop and retain testing and other information that supports their certification that their vehicles comply, we recognize that the circumstances surrounding retroactive certification are somewhat different, since the vehicle manufacturer may be relying on data that are at least several years old.

II. Requests for Comments

(1) Please comment on whether vehicle manufacturers should document and retain information in addition to a unique vehicle identifier, and the dates of original manufacture and retroactive certification. If so, what additional information should be required, and why?

(2) Please provide information on what types of unique vehicle identifiers are used to identify vehicles manufactured for sale in Canada or Mexico.

(3) Please comment on whether the records described in this notice should be maintained for a period of time other than five years after the date of retroactive certification.

III. Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review,'' provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of

for research, investigations, demonstrations, training, competitive racing events, show, or display; vehicles being temporarily imported for personal use; and vehicles being temporarily imported by individuals who are attached to the military or diplomatic service of another country or to an international organization. (49 CFR Part 591, *Importation of Vehicles and Equipment Subject to Federal Safety, Bumper and Theft Prevention Standards.*)

[2] Under the Vehicle Safety Act, NHTSA does not certify that a vehicle complies with all applicable safety standards. That obligation rests with the manufacturer of the vehicle.

[3] A vehicle imported into the United States by a registered importer pursuant to 49 U.S.C. 30141, *et seq.* and 49 CFR Part 591 is not required to have a certification label affixed to the vehicle prior to entry into the U.S. However, it must have a certification label affixed by the registered importer before it can be sold or released for highway use.

[4] In some instances, minor modifications may be necessary to bring the vehicle into compliance with the safety standards in effect at the time of manufacture. For example, a manufacturer may need to add an indicator that the odometer readings are in km/h.

Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking is not considered a significant regulatory action under section 3(f) of the Executive Order 12866. Consequently, this rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' The rulemaking action is also not considered to be significant under the Department's Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

This document would amend 49 CFR part 576 by adding new recordkeeping requirements for vehicle manufacturers that retroactively affix U.S. certification labels to vehicles that were originally manufactured for sale outside of the United States. The cost of maintaining such records would be minor and the required retention of such records would not raise any novel legal or policy issues.

Executive Order 13132

Executive Order 13132 requires NHTSA to develop an accountable process to ''ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, the agency may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. NHTSA also may not issue a regulation with Federalism implications and that preempts State law unless the agency consults with State and local officials early in the process of developing the proposed regulation.

We have analyzed this rule in accordance with the principles and criteria set forth in Executive Order 13132 and have determined that this rule does not have sufficient Federal implications to warrant consultation with State and local officials or the preparation of a Federalism summary impact statement. The rule will not have any substantial impact on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rulemaking that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rulemaking is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866. It also does not involve decisions based on health risks that disproportionately affect children.

Executive Order 12778

Pursuant to Executive Order 12778, ''Civil Justice Reform,'' we have considered whether this proposed rule would have any retroactive effect. This proposed rule, if adopted, would not have any retroactive effect. A petition for reconsideration or other administrative proceeding will not be a prerequisite to an action seeking judicial review of this rule if it is adopted. This proposed rule would not preempt the states from adopting laws or regulations on the same subject, except that it would preempt a state regulation that is in actual conflict with the federal regulation or makes compliance with the Federal regulation impossible or interferes with the implementation of the federal statute.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

I have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and certify that this proposal will not have a significant economic impact on a substantial number of small entities. This proposal would merely impose minor recordkeeping obligations on vehicle manufacturers that decide to retroactively apply a certification label. The application of such a label is voluntary.

National Environmental Policy Act

We have analyzed this proposed amendment for the purposes of the National Environmental Policy Act and determined that it would not have any significant impact on the quality of the human environment.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. The proposed rule would require vehicle manufacturers who retroactively apply certification labels to maintain a list of all vehicles so certified. NHTSA is currently working on obtaining a valid OMB control number.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in our regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

No voluntary consensus standards were used in developing the proposed requirements because no voluntary standards exist that address the subject of this rulemaking.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if we publish with the final rule an explanation why that alternative was not adopted.

The proposed rule would not impose any unfunded mandates under the Unfunded Mandates Reform Act of 1995. This rulemaking does not meet the definition of a Federal mandate because it would not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this rulemaking is not subject to the requirements of sections 202 and 205 of the UMRA.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

IV. Submission of Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under DATES. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

- Go to the Docket Management System (DMS) Web page of the Department of Transportation (http://dms.dot.gov/).
- On that page, click on ''search.''
- On the next page (http://dms.dot.gov/search/), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were ''NHTSA–1998–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''
- On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

List of Subjects in 49 CFR Part 576

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 576 as follows:

PART 576—RECORD RETENTION

1. The authority citation for part 576 continues to read as follows:

Authority: 49 U.S.C. 30112, 30115, 30117–121, 30166–167; delegation of authority at 49 CFR 1.50.

2. Designate §§ 576.1 through 576.8 as Subpart A—''General''.

3. Revise §§ 576.1 through 576.4 to read as follows:

§ 576.1 Scope.

This subpart establishes requirements for the retention by motor vehicle manufacturers of complaints, reports, and other records concerning motor vehicle malfunctions that may be related to motor vehicle safety.

§ 576.2 Purpose.

The purpose of this subpart is to preserve records that are needed for the proper investigation, and adjudication or other disposition, of possible defects related to motor vehicle safety and instances of nonconformity to the motor vehicle safety standards and associated regulations.

§ 576.3 Application.

This subpart applies to all manufacturers of motor vehicles, with respect to all records generated or acquired after August 15, 1969.

§ 576.4 Definitions.

All terms in this subpart that are defined in the Act are used as defined therein.

4. Revise § 576.6 to read as follows:

§ 576.6 Records.

Records to be retained by manufacturers under this subpart include all documentary materials, films, tapes, and other information-storing media that contain information concerning malfunctions that may be related to motor vehicle safety. Such records include, but are not limited to, communications from vehicle users and memoranda of user complaints; reports and other documents, including material generated or communicated by computer, telefax, or other electronic means, that are related to work performed under, or claims made under, warranties; service reports or similar documents, including electronic submissions, from dealers or manufacturer's field personnel; and any lists, compilations, analyses, or discussions of such malfunctions contained in internal or external correspondence of the manufacturer, including communications transmitted electronically.

5. Revise § 576.8 to read as follows:

§ 576.8 Malfunctions covered.

For purposes of this subpart, ''malfunctions that may be related to motor vehicle safety'' shall include, with respect to a motor vehicle or item of motor vehicle equipment, any failure or malfunction beyond normal deterioration in use, or any failure of performance, or any flaw or unintended deviation from design specifications, that could in any reasonably foreseeable manner be a causitive factor in, or aggravate, an accident or an injury to a person.

6. Add subpart B to read as follows:

Subpart B—Recordkeeping and Retention by Manufacturers That Retroactively Certify Compliance With Federal Motor Vehicle Safety Standards

Sec.

Subpart B—Recordkeeping and Retention by Manufacturers that Retroactively Certify Compliance with Federal Motor Vehicle Safety Standards

576.21 Scope.

This subpart establishes requirements for the generation and retention by motor vehicle manufacturers, other than registered importers, of information related to motor vehicles that are retroactively certified as complying with all applicable Federal motor vehicle safety standards, to permit the importation of those vehicles into the United States.

§ 576.22 Purpose.

The purpose of this subpart is to facilitate determining whether a vehicle manufactured for sale in a country other than the United States, but being used in the United States, has a valid certification of compliance with all applicable Federal motor vehicle safety standards.

§ 576.23 Application.

This subpart applies to manufacturers that originally manufactured motor vehicles for sale in a country other than the United States and that retroactively certify that one or more of those vehicles comply with all Federal motor vehicle safety standards that were applicable to those vehicles at the time of their original manufacture.

§ 576.24 Requirements.

Each manufacturer of motor vehicles described in § 576.23 must retain all records described in § 576.25, in the manner described in § 576.26, for a period of five years from the date on which the certification label was retroactively affixed to the vehicle.

§ 576.25 Records.

Each manufacturer required by this subpart to maintain records must generate and retain records that identify all vehicles that have been retroactively certified by the vehicle manufacturer. The records retained must include, at a minimum, the following information for each vehicle:

(a) The vehicle identification number (VIN) issued in accordance with Part 565 of this chapter or, if the vehicle does not have such a VIN, another unique vehicle identifier which provides the means to identify the vehicle make, model, and model year;

(b) The month and year of original manufacture; and

(c) The month and year the retroactive certification label was affixed to the vehicle.

§ 576.26 Form of retention.

Information may be reproduced or transferred from one storage medium to another (e.g., from paper files to computer disks) as long as no information is lost in the reproduction or transfer.

Issued on: March 6, 2002.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 02–5895 Filed 3–14–02; 8:45 am]

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Federal Register

Tuesday,
March 19, 2002

Part IX

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 591

Importation of Commercial Motor Vehicles; Proposed Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 591

[Docket No. NHTSA 02–11593; Notice 1]

RIN 2127–AI64

Importation of Commercial Motor Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to add a definition of the term ''import'' to our regulation on the importation of motor vehicles. A 1966 statute that we administer prohibits the manufacture of new motor vehicles for sale in the United States unless, at the time of manufacture, they complied with the Federal motor vehicles safety standards (FMVSS) then in effect and bear a label certifying that compliance. The statute also prohibits the importation of new or used motor vehicles into the United States unless they were manufactured to conform with, or are brought into conformity with, those standards and are so certified. In 1975, NHTSA issued an interpretation stating that the importation prohibition applies to the bringing into the United States of foreign-domiciled commercial vehicles. We are proposing a definition of the term ''import'' that would codify this longstanding interpretation in the Code of Federal Regulations.

This document is one of several being issued by this agency and the Federal Motor Carrier Safety Administration (FMCSA) to ensure that the interests of safety are protected as the United States takes the steps necessary to comply with its obligations under the North American Free Trade Agreement regarding the access of Mexico-domiciled motor carriers to the United States.

DATES: *Comment closing date:* You should submit your comments early enough to ensure that Docket Management receives them not later than May 20, 2002.

ADDRESSES: For purposes of identification, please mention the docket number of this document in your comments. You may submit those comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590. Alternatively, you may submit your comments by e-mail at *http://dms.dot.gov.*

You may call Docket Management at (202) 366–9324, or you may visit the Docket from 10 a.m. to 5 p.m., Monday through Friday. The Docket is located at the Plaza level of this building, northeast entrance.

FOR FURTHER INFORMATION CONTACT: *For technical issues:* Mr. George Entwistle, Chief, Equipment and Imports Division, Certification Branch, Office of Safety Assurance, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; telephone (202) 366–5291; telefax (202) 366–1024.

For legal issues: Mr. Edward Glancy, Office of the Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; telephone (202) 366–2992; telefax (202) 366–3820.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 1992, the United States, Canada and Mexico signed the North American Free Trade Agreement (NAFTA). Following approval by Congress, the Agreement entered into force on January 1, 1994.

Since 1982, a statutory moratorium on the issuance of operating authority to Mexico-domiciled motor carriers had, with a few exceptions, limited the operations of such carriers to municipalities and commercial zones along the United States-Mexico border (''border zone''). Annex I of NAFTA called for liberalization of access for Mexico-domiciled motor carriers on a phased schedule. Pursuant to this schedule, Mexico-domiciled charter and tour bus operations were permitted beyond the border zone on January 1, 1994. Truck operations were to have been permitted in the four United States border states in December 1995, and throughout the United States on January 1, 2000; scheduled bus operations were to have been permitted throughout the United States on January 1, 1997.

However, the United States postponed implementation with respect to Mexico-domiciled truck and scheduled bus service due to concerns about safety, continuing its blanket moratorium on processing applications by these Mexico-domiciled motor carriers for authority to operate in the United States outside the border zone. On February 6, 2001, a NAFTA dispute resolution panel ruled that the blanket moratorium violated the United States' commitments under NAFTA.

The Department of Transportation is now in the process of preparing for the implementation of these NAFTA provisions. NHTSA and FMCSA are taking the steps necessary to ensure that the provisions are implemented in a manner consistent with the interests of safety. One of NHTSA's primary concerns is to ensure that the vehicles used in the United States complied with the Federal Motor Vehicle Safety Standards (FMVSSs) in effect at the time that they were manufactured.

NHTSA issues FMVSSs under a statute originally known as the National Traffic and Motor Vehicle Safety Act. That statue has been codified at 49 U.S.C. 30101, *et seq.* (In the interest of simplicity, we will refer to that statute by as the Vehicle Safety Act.) The purpose of the Vehicle Safety Act is to reduce the number of crashes and deaths and injuries resulting from crashes.

The Vehicle Safety Act specifies that, subject to certain exemptions: [1]

> A person may not manufacture for sale, offer to sell, introduce or deliver for introduction in interstate commerce, or *import into the United States,* any motor vehicle or motor vehicle equipment manufactured on or after the date an applicable motor vehicle safety standard * * * takes effect unless the vehicle or equipment complies with the standard and is covered by a certification issued under section 30115 of this title.

(49 U.S.C. 30112; emphasis added.)

Thus, the FMVSSs apply to new motor vehicles that vehicle manufacturers manufacture for sale in the United States. They also apply, subject to certain exemptions, to new or used motor vehicles that anyone presents for importation, whether for sale, resale or other purposes, into the United States. The Vehicle Safety Act requires manufacturers to certify that their vehicles comply with all applicable safety standards. The vehicles must bear a permanent label that is applied by the vehicle manufacturer and certifies that the vehicles complied with all applicable safety standards. 49 U.S.C. 30115.

1975 Interpretation

In 1975, NHTSA addressed the issue of whether Canadian-domiciled commercial vehicles being operated in the United States were subject to the FMVSSs. Mr. J.C. Carruth, President of

[1] For example, our regulations provide that exemptions may be issued for motor vehicles or items of motor vehicle equipment that are necessary for research, investigations, demonstrations, training, competitive racing events, show, or display; vehicles being temporarily imported for personal use; and vehicles being temporarily imported by individuals who are attached to the military or diplomatic services of another country or to an international organization. (49 CFR part 591, Importation of Vehicles and Equipment Subject to Federal Safety, Bumper and Theft Prevention Standards.)

the Canadian Trucking Association, wrote to the Department seeking relief from the above statutory prohibition because it prevented the operation in the United States of Canada-based commercial vehicles that were not manufactured in accordance with FMVSS No. 121, Air brake systems. To provide that relief, Mr. Carruth sought to have those vehicles temporarily excluded from the Standard.

In a May 9, 1975 letter replying to Mr. Carruth, signed by NHTSA's Administrator, the agency concluded that this statutory prohibition applies to these Canada-based commercial vehicles. The agency recited the prohibition and noted that the Vehicle Safety Act provided that non-complying motor vehicles shall be refused admission to the United States under joint regulations issued by the Secretary of the Treasury and the Secretary of Transportation. The agency also noted that the Act provided that the two Secretaries may, by joint regulations, permit the temporary importation of a noncomplying motor vehicle, after the first purchase of it in good faith for purposes other than resale, i.e., after the vehicle had been purchased by an end user and thus was no longer new. However, while joint regulations had been issued to permit the temporary importation of a noncomplying motor vehicle for personal use, none had been issued to permit importation for commercial use on the highways of the United States. NHTSA concluded that any exclusion of Canadian-domiciled vehicles operating in the United States from the requirements of FMVSS No. 121 would be ''an evasion of the Vehicle Safety Act's prohibition on importation of noncomplying vehicles.'' Although the 1975 letter did not address the issues of commercial buses or of Mexico-domiciled commercial vehicles, its rationale applied equally to them.

In 1995, the Department of Transportation publicized this interpretation in connection with its efforts to prepare for the implementation of NAFTA. It did so by incorporating the interpretation in a NAFTA Operating Requirements Handbook, which was printed in three languages and distributed to all participants at a NAFTA conference held in San Antonio, TX on November 14–16, 1995. The handbook stated that all commercial vehicles entering the United States must have been manufactured in compliance with all applicable FMVSSs and must bear a label certifying such compliance.

Review and Reaffirmation of 1975 Interpretation

Following the decision of the NAFTA panel in February of this year, NHTSA reviewed its 1975 interpretation. After consulting with the Office of Regulations and Rulings of the United States Customs Service (USCS), NHTSA has tentatively reaffirmed that interpretation and is proposing to codify it in the Code of Federal Regulations.

We begin by noting that while Congress has codified the Vehicle Safety Act since the 1975 interpretation, and modified many of the Act's provisions relating to importation of vehicles, no changes have been made that affect the 1975 interpretation. The Vehicle Safety Act continues to specify that, subject to certain exemptions:

> A person may not manufacture for sale, offer to sell, introduce or deliver for introduction in interstate commerce, or *import* into the United States, any motor vehicle or motor vehicle equipment manufactured on or after the date an applicable motor vehicle safety standard. * * * takes effect unless the vehicle or equipment complies with the standard and is covered by a certification issued under section 30115 of this title.

(49 U.S.C. 30112; emphasis added.)

Neither the statute nor any agency regulation exempts commercial vehicles domiciled in Canada or Mexico from the requirement that the vehicles must have been manufactured to meet the FMVSSs in order to be imported into the United States.

Several other factors also lead us to tentatively reaffirm the 1975 interpretation.

First, the interpretation is consistent with the plain meaning of the word ''import,'' which the dictionary defines as meaning ''to bring in (merchandise, commodities, workers, etc.) from a foreign country for use, sale, processing, reexport, or services'' (Random House Compact Unabridged Dictionary, Special Second Edition).

Second, the interpretation is consistent with the purposes of the Vehicle Safety Act. The stated purpose of the Act is ''to reduce traffic accidents and deaths and injuries resulting from traffic accidents.'' The fact that a commercial vehicle is domiciled in Canada or Mexico is of no consequence as to its safety when it is being operated on United States highways.

Third, while courts have sometimes interpreted the term ''import'' in narrower ways, the use of the term in the Vehicle Safety Act is similar to its use in statutes where the term has been construed broadly. In particular, we believe that the Vehicle Safety Act's prohibition on the importation of noncomplying vehicles is analogous to contraband laws that prohibit the importation of dangerous items. The Vehicle Safety Act prohibits the importation of noncomplying vehicles because such vehicles pose greater safety risks than compliant vehicles.

We note that the Department of Transportation, including representatives from NHTSA and FMCSA, met with the Office of Regulations and Rulings of the United States Customs Service on March 8, 2001 to discuss enforcement of the importation prohibition against foreign-domiciled commercial motor vehicles. At that meeting, representatives of the Office of Regulations and Rulings agreed with NHTSA's 1975 interpretation that the bringing of a commercial vehicle into the United States constituted an importation of the vehicle under the Vehicle Safety Act.

We are placing in the docket a copy of our 1975 interpretation, as well as a legal memorandum that was prepared then in support of that interpretation.

To codify our 1975 interpretation in the Code of Federal Regulations, we are proposing to add a definition of the term ''import'' to 49 CFR Part 591, ''Importation of Vehicles and Equipment Subject to Federal Safety, Bumper, and Theft Prevention Standards.'' This part does not currently include any definition for this term. Therefore, any definition we add must reflect not only the 1975 interpretation but also represent a complete definition of the term. We are proposing the following definition:

> Import means bring into the United States, whether on a permanent or temporary basis. This includes, but is not limited to, bringing a vehicle into the United States for the purpose of transporting cargo or passengers into the United States.

We note that, under Part 591, a person may not import a motor vehicle into the United States unless the person files one of several specified declarations. One of the declarations that provides a basis for the vehicle to be imported, set forth at § 591.5(b), is that the vehicle complies with all applicable FMVSSs and bears a certification label to that effect permanently affixed by the original manufacturer.

If the driver of a complying Canada- or Mexico-domiciled commercial vehicle were stopped at the border by USCS and asked to file a declaration, the driver would simply need to file the one set forth at § 591.5(b). (In order for the driver to be able to file that declaration, the vehicle would, of course, need to comply with all applicable FMVSSs in effect at the time of original manufacture and bear a

certification label to that effect). As a practical matter, however, drivers of such vehicles would ordinarily not be asked to file a declaration. This is because USCS interprets its regulations to provide that commercial motor vehicles engaged in international commerce are ''instruments of international traffic'' and, as such, are not subject to the process of formal entry.

Companion Actions by NHTSA and FMCSA

This document is one of several related actions by NHTSA and FMCSA as part of the Department of Transportation's efforts to ensure that the interests of safety are protected as the United States takes the steps to implement the provisions in NAFTA regarding access of Mexico-domiciled motor carriers to the United States.

FMCSA is issuing four final rules to ensure that the interests of safety are protected in granting authority for Mexico-domiciled motor carriers to operate within the United States. Two of the final rules revise FMCSA's regulations and forms governing applications by those carriers for such authority. The forms require additional information about each applicant's business and operating practices to help FMCSA to determine if the applicant is capable of meeting the safety requirements established for operating in interstate commerce in the United States. Among other things, a carrier must certify on its application form that the vehicles it will use in the United States were manufactured in compliance with the applicable FMVSSs. The third final rule, being issued on an interim basis, establishes a safety monitoring system and compliance initiative to further aid in determining whether Mexico-domiciled carriers applying to operate anywhere in the United States have the capability to comply with applicable safety regulations and conduct safe operations. The fourth final rule, also issued on an interim basis, establishes procedures to certify and maintain certification for auditors and investigators.

Other actions include (1) an NPRM issued by FMCSA proposing to require that all commercial motor vehicles operating in the United States have labels certifying their compliance with the FMVSSs in effect when they were built, (2) a draft policy statement issued by NHTSA providing that a vehicle manufacturer may, if it has sufficient basis for doing so, retroactively apply a label to a motor vehicle certifying that the vehicle complied with all applicable FMVSSs in effect at the time of manufacture, and (3) an NPRM issued by NHTSA proposing recordkeeping requirements for foreign manufacturers that retroactively certify vehicles.

We request comments on this proposed definition.

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this proposed rule under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This proposed rule was not reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' This action is not ''significant'' under the Department of Transportation's regulatory policies and procedures.

This proposed rule would not impose any new requirements or mandate the expenditure of any resources. Instead, it would improve the clarity of the agency's regulation on imports by codifying a longstanding intepretation concerning the meaning of the term ''import.''

B. Regulatory Flexibility Act

NHTSA has considered the effects of this proposed rule under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities.

As noted above, the proposed rule would not impose any new requirements or mandate the expenditure of any resources, but would instead improve the clarity of the agency's regulation on imports by codifying a longstanding interpretation concerning the meaning of the term ''import.''

C. National Environmental Policy Act

NHTSA has analyzed this proposed rule for the purposes of the National Environmental Policy Act and determined that it would not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

The agency has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it would not have sufficient federal implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The proposed rule would not have any substantial impact on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

E. Unfunded Mandates Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation with base year of 1995). Adjusting this amount by the implicit gross domestic product price deflator for the year 2000 results in $109 million (106.99/98.11 = 1.09). The assessment may be included in conjunction with other assessments.

This proposed rule would not mandate any expenditures by State, local or tribal governments, or by the private sector.

Submission of Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT.** In addition, you should

submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR Part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under DATES. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

Go to the Docket Management System (DMS) Web page of the Department of Transportation *(http://dms.dot.gov/).*

On that page, click on ''search.''

On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were ''NHTSA–1998–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''

On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

List of Subjects in 49 CFR Part 591

Imports, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 591 as follows:

PART 591—IMPORTATION OF VEHICLES AND EQUIPMENT SUBJECT TO FEDERAL SAFETY, BUMPER, AND THEFT PREVENTION STANDARDS

1. The authority citation for part 591 is revised to read as follows:

Authority: 49 U.S.C. 322(a), 30112, 30114; Pub. L. 100–562, 102 Stat. 2824; Pub. L. 105–178, 12 Stat. 469; delegations of authority at 49 CFR 1.50 and 501.8.

2. Section 591.2 is revised to read as follows:

§ 591.2 Purpose.

The purpose of this part is to ensure that:

(a) Motor vehicles and motor vehicle equipment permanently imported into the United States conform with theft prevention standards issued under part 541 of this chapter and that they conform with, or are brought into conformity with, all applicable Federal motor vehicle safety standards issued under part 571 of this chapter and bumper standards issued under part 581 of this chapter;

(b) Foreign-domiciled commercial motor vehicles that are brought into the United States were manufactured to conform with, or are brought into conformity with, all applicable Federal motor vehicle safety standards issued under part 571 of this chapter and any applicable theft prevention and bumper standards; and

(c) Nonconforming vehicles and equipment items imported on a temporary basis are ultimately either exported or abandoned to the United States.

3. Section 591.4 is amended by adding a definition in alphabetical order to read as follows:

§ 591.4 Definitions.

* * * * *

Import means bring into the United States, whether on a permanent or temporary basis. This includes, but is not limited to, bringing a vehicle into the United States for the purpose of transporting cargo or passengers into the United States.

* * * * *

Issued on March 6, 2002.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 02–5896 Filed 3–14–02; 8:45 am]

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Federal Register

Tuesday,
March 19, 2002

Part X

Department of Housing and Urban Development

24 CFR Parts 3280 and 3282
Manufactured Home Construction and Safety Standards: Smoke Alarms; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 3280 and 3282

[Docket No. FR–4552–F–02]

RIN 2502–AH48

Manufactured Home Construction and Safety Standards: Smoke Alarms

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule amends the Federal Manufactured Home Construction and Safety Standards to revise the requirements for the location and placement of smoke alarms. The purposes of these amendments are to improve the effectiveness and performance of smoke alarms in early warning detection of manufactured home fires and to reduce the rate of fire fatalities in new manufactured housing.

EFFECTIVE DATE: September 16, 2002. The incorporation by reference of certain publications in this rule is approved by the Director of the Federal Register as of September 16, 2002. Manufacturers are not required to modify their floor plans and wiring diagrams and obtain DAPIA approval until March 19, 2003. In those cases where modified DAPIA-approved designs are not available, IPIAs will use this rule, rather than DAPIA-approved designs, to inspect smoke alarm placement and interconnection until March 19, 2003.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Cocke, Acting Director, Office of Consumer and Regulatory Affairs, Room 9156, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–0502 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On May 18, 2000, the Department published a proposed rule to amend the Federal Manufactured Home Construction and Safety Standards (Standards) to revise the requirements for location and placement of smoke alarms. The amendments will improve the effectiveness and performance of smoke alarms in early warning detection of manufactured home fires and, as a result, reduce the rate of fire fatalities in new manufactured housing.

One of the most significant factors in reducing fire-related fatalities in manufactured homes, from the perspective of fire safety, is the requirement in the Standards for the installation of permanently wired smoke detectors in manufactured homes (24 CFR 3280.208). The enforcement program for this requirement is designed to ensure that a manufactured home is not labeled or shipped without such smoke alarms. Nevertheless, fire data studies conducted for HUD by the National Fire Protection Association (NFPA) have continued to indicate that in about 35–40% of manufactured home fires occurring in post-standard manufactured homes, smoke alarms were not present or operational.

This fact suggests a high rate of occupant disabling of smoke alarms. This may be a result of frequent false and nuisance alarms caused, for example, by the close proximity of these devices to cooking appliances. In addition, findings from the National Smoke Detector Project conducted by the Consumer Product Safety Commission (CPSC) indicated that for all homes investigated only about 70% of the smoke alarms were working. For permanently wired smoke alarms, the type used in HUD code manufactured homes, the CPSC study estimated the number of working smoke detectors to be approximately 85%.

The NFPA also reported that the rate of fire fatalities for all manufactured homes was cut nearly in half when alarms were operational. This emphasizes the importance of reducing the occupant-disabling problem and improving the reliability and effectiveness of smoke alarms.

HUD had previously designated the NFPA to undertake a consensus process to develop recommendations for revising and updating the manufactured housing standards. The Department has received a proposal (TIA 97–1) and the NFPA 501 Standard (1999, 2000 editions) developed through that process. The proposal and relevant provisions in NFPA 501 contain recommendations to revise the present smoke alarm requirements in HUD's Standards. The Department also commissioned the National Institute of Standards and Technology (NIST) to evaluate the adequacy of the current requirements for smoke alarms in the Standards and to recommend alternatives that are consistent with national fire safety standards for other types of housing and that would reduce the incidence of nuisance alarms.

The findings and recommendations from the NFPA and NIST evaluations are compatible, and together with comments received from the public have formed the basis for the revised smoke alarm requirements contained in this final rule.

As a result of the implementation of the final rule, the percentage of manufactured homes without smoke alarms or without functioning smoke alarms is expected to gradually reduce over time, as homes complying with the new requirements replace older homes in the inventory. The Department projects that it will take between 20–32 years to replace all occupied manufactured homes in the existing inventory. (Based on the 1999 American Housing Survey, there are approximately 8 million occupied manufactured homes; the estimate of 20–32 years assumes between 250,000–400,000 manufactured homes produced annually and that homes are being replaced at approximately the same rate as they are entering the inventory.) The increased presence of working smoke alarms resulting from the final rule is expected to save as many as 30 lives annually, when the current inventory of homes has been replaced.

The above is based on an estimate of 100 fire deaths a year in HUD code homes of which 60%, or 60, fatalities occur in fires without functioning smoke alarms. The presence of functioning smoke alarms reduces the chances of dying in a fire by 50%. The likelihood that about 1 out of 6 smoke alarms may not be working or functioning has already been accounted for in these estimates. Hence an estimate of 30 lives saved annually by the full implementation of the final rule.

The revisions made in the final rule are also consistent with the revised purposes of the National Manufactured Housing Construction and Safety Standards Act of 1974 (Act), including ''to protect the quality, durability, safety, and affordability of manufactured homes;'' and ''to provide for the establishment of practical, uniform, and to the extent possible, performance-based Federal construction standards for manufactured homes;'' (42 U.S.C. 5401).

II. Analysis of Public Comments

The Department received 18 comments in response to the proposed rule. The commenters can generally be characterized as follows:

Home manufacturers (2)
Industry groups (3)
DAPIA (1)
Governmental agencies (3)
Individuals (1)
Fire officials (4)
Housing authorities (2)
Private standards groups (1)

National Associations (1)

All of the comments were generally supportive of the need to update and revise the Standards to improve smoke alarm performance in manufactured homes. However, many of the commenters did suggest changes to the proposed rule, a number of which are incorporated in this final rule. Some of the following comments were submitted by multiple commenters:

Comment: The prescriptive aspects of the proposed rule should be replaced with performance requirements.

Response: The prescriptive aspects of the proposed rule have been removed from the final rule where it was possible to do so without compromising the desired effect of the requirement. For example, HUD has replaced specific restrictions on locating alarms with performance-oriented criteria in § 3280.208(b)(3); thus the rule no longer needs to specify that locations within 3 feet of a door to a kitchen or a door to a bathroom are prohibited. In addition, locations for mounting a smoke alarm in a stairway are more general, requirements for visible and tactile appliances no longer specify location within 16 feet of a pillow, and the prohibition on location in specified extreme temperatures and climates has been replaced with a reference to the terms of the listing for the smoke alarm. Finally, the rule does not specify locations for smoke alarms within a room unless needed for proper operation, such as when they are mounted on a peaked sloping or a shed sloping ceiling.

Comment: HUD should consider adopting the NFPA 501 provisions for smoke alarms.

Response: As explained in the preambles of the proposed rule and this rule, the Department has considered and largely based the final rule on the provisions of the NFPA 501 Standard. In addition, as a result of comments provided by NFPA, the final rule updates proposed referenced standards in § 3280.208(a); clarifies stairway location requirements for smoke alarms for upper stories and basements; adds provisions in § 3280.208(b) for the installation of a junction box for basement designs; and requires smoke alarms to be tested operationally in § 3280.208(f) and, if the alarm does not function as designed, to be replaced if it does not function properly in the first retest. A further suggestion of the NFPA—to incorporate by reference the UL 1971 (Signaling Devices for Hearing Impaired, 1995) standard—will be referred to the Consensus Committee mandated by the Manufactured Housing Improvement Act of 2000 (Title VI, Pub. L. 106–569, approved December 27, 2000). Although HUD agrees with the value of establishing such a standard, it cannot be included as part of the final rule because no such standard had been proposed for comment previously.

Comment: The term ''living room'' should be changed to ''living area'' to avoid confusion about where the smoke alarm is to be located when no specific living room is designated adjacent to a kitchen, e.g., when a kitchen is located between two living areas such as a ''great room'' and a family room. Also, clarify that only one smoke alarm is required to protect the ''combined'' living area and kitchen space, when this design configuration occurs.

Response: HUD has revised the final rule to reference ''living area.'' Because the rule now reads as requiring at least one alarm to protect the location that includes both the living area and kitchen space, HUD believes it is clear that only one smoke alarm is required to protect these areas. Whenever possible, the alarm should be located in the living area remote from the kitchen and cooking appliances.

Fires that cause fatalities in residential and manufactured homes frequently start in the living and kitchen areas. HUD is interested in continuing to receive comments on whether a smoke alarm should be installed in both the kitchen and living area when those areas are separated or isolated from each other by full-height doors and walls. For example, if the smoke alarm is installed in the living room and a door is closed between the kitchen and living room, the alert time of an unattended fire in the kitchen may be delayed. In these configurations, manufacturers should consider if the effectiveness of the alarm is impaired, and if an additional smoke alarm should be installed to protect the kitchen area. Any comments on this issue will be referred to the Consensus Committee for its consideration.

Comment: Manufacturers do not know if rooms not designed for sleeping are actually used as bedrooms, and should only be accountable for installing smoke alarms in rooms designed for sleeping.

Response: HUD agrees, and the requirement for installing smoke alarms has been revised in § 3280.208(b)(1)(ii) to read ''in each room designed for sleeping.''

Comment: The cost analysis did not include costs to revise designs and modify production lines, costs to replace or repair alarms that do not function, increased installation costs to purchasers, and increased enforcement costs. Breaker and crossover provisions could also result in additional costs.

Response: The cost analysis for the final rule does consider increased costs for updating floor plans and electrical wiring diagrams. However, the Department does not agree that other considerations mentioned in the comments result in significant changes to current production practices by manufacturers or inspections by IPIAs. The Department also believes any additional breaker or crossover costs will be offset by permitting more than one smoke alarm to be installed on an electrical circuit. The section of the preamble entitled ''Impact on Small Entities'' also addresses comments on the cost analysis.

Comment: Do not eliminate the requirement to also have a smoke alarm in hallways that lead to sleeping rooms.

Response: The Department recognizes that an additional alarm in the hallway areas leading to bedrooms may provide more protection, but believes that the requirement for installing an alarm in each bedroom that is also interconnected provides appropriate enhanced protection for sleeping occupants.

Comment: Manufacturers need adequate lead time to redesign floor plans for the new smoke alarm requirements.

Response: The effective date of the final rule extends the period of time for revising floor plans and electrical wiring diagrams and for obtaining DAPIA approval. Manufacturers have up to 1 year from the date of publication of today's rule before they must modify their current designs.

Comment: The rule should permit multiple alarms to be placed on the same electrical circuit.

Response: The final rule clarifies that multiple alarms may be placed on the same circuit, in § 3280.208(d)(2).

Comment: Ten-year batteries with an interconnection feature may never be available and may, in fact, have to be designed for additional service life because of the interconnection requirement. The present batteries are barely capable of lasting 10 years even without considering the added circuitry required for interconnection of alarms. Testing has been going on for about 7 years and has only been conducted on ionization chamber-type alarms; therefore, it is premature to mandate the use of battery-type alarms.

Response: HUD agrees that batteries are likely to have to be designed for additional shelf life for interconnection requirements. But HUD also believes that making this alternative available

will encourage the development of the technology.

Comment: Smoke alarms for homes designed to be installed over a basement should be permitted to be shipped loose.

Response: HUD agrees, and § 3280.208(b) has been revised accordingly in the final rule.

Comment: If a sales contract entered into with a purchaser is for a home on display at a retail sales lot, a manufacturer would not be aware at the time of production of any special needs for visible and tactile appliances.

Response: HUD agrees, and the final rule has been revised to require the manufacturer to install visible and tactile devices only if notified by the purchaser or retailer before the home enters the first stage of production at the factory.

Comment: The location in the proposed rule for providing the smoke alarm manufacturers' instructions is ambiguous and should be replaced with a requirement for the instructions to be temporarily mounted to a cabinet or countertop in the kitchen.

Response: The final rule requires that the information be provided in the same manner and location as the consumer manual required by 24 CFR § 3282.207. While it is not required, manufacturers may incorporate the information into the consumer manual.

Comment: Washing dirty smoke alarms will prevent false alarms.

Response: Each smoke alarm manufacturer determines appropriate maintenance recommendations to include in its instructions.

Comment: HUD should consider applying the new rule for smoke alarms to existing homes, including those covered by HUD's Section 8 Program.

Response: HUD's authority under the Act does not extend to establishing regulations for used manufactured homes. However, this comment will be forwarded to the Section 8 Housing Office at HUD for consideration under its operating authority.

Comment: The home manufacturer should be allowed to recess mount the detector in the ceiling or wall so that it is flush with the ceiling or wall, making it more difficult to tamper with.

Response: This rule does not prohibit recess mounting of alarms if such mounting is permitted by the terms of the listing and does not impair the alarm's effectiveness.

Comment: HUD is encouraged to disseminate the ''Guide for Proper Use of Residential Smoke Alarms''.

Response: HUD does not require, but encourages dissemination of this guide, which was developed by the National Electrical Manufacturers Association, in conjunction with other fire service organizations. NEMA can be contacted at 1300 N. 17th Street, Suite 1847, Rosslyn, VA 22209. Telephone: (703) 841–5900.

Comment: Manufacturers of smoke alarms should be encouraged to produce combined smoke alarms, weather alert radios, and home intrusion sensor alarms.

Response: This suggestion will be forwarded to the Consensus Committee for its consideration when the committee has been established.

III. Section-by-Section Revisions

The final rule changes the current requirements as follows:

(a) The location of where smoke alarms are to be located is changed from outside the bedroom areas to inside each room designed for sleeping;

(b) A dedicated smoke alarm to specifically protect the living and kitchen area is now required;

(c) The smoke alarm must be of the photoelectric type or incorporate a temporary silencing feature if mounted within 20 feet of a cooking appliance;

(d) A smoke alarm must be provided at a stairway to an upper level or basement;

(e) Mounting and location requirements for smoke alarms in rooms with sloping or peaked ceilings are changed to be consistent with other model and fire code requirements for single family housing;

(f) Smoke alarms must be interconnected so that activation of one alarm causes all alarms to be activated;

(g) Provisions for special devices for hearing and visually impaired persons are added;

(h) Manufacturers must operationally test each smoke alarm at the factory, provide installers with instructions on how to inspect and retest each alarm during installation of the home, and provide homeowners with operating and testing information from the alarm manufacturer; and,

(i) Each smoke alarm must be both permanently wired and be provided with battery back-up to operate in the event of a power outage.

The following is a summary of the major changes from the proposed rule and revisions to the existing requirements being made in the final rule:

1. Section 3280.202 replaces the term ''smoke detector'' with the term ''smoke alarm''. While these terms are commonly used interchangeably, other housing codes generally define a ''smoke detector'' as a device that detects visible or invisible particles of combustion but does not include an alarm. By contrast, a ''smoke alarm'' is a self-contained unit that is responsive to smoke and incorporates a sensor, controls, and an alarm-sounding device. A conforming change is made in § 3280.112. The rule also deletes the definition of ''single-station alarm device'' because the term is not necessary. Additionally, the rule defines a ''tactile notification appliance'' in § 3280.202 as ''a notification appliance that alerts by the sense of touch or vibration.''

2. The standards proposed to be incorporated in § 3280.208(a) have been updated to refer to the most recent version of the incorporated standard.

3. Section 3280.208(b)(1)(i) now clarifies that manufacturers are required to install at least one smoke alarm to protect the living and kitchen areas, whether the areas are separate or combined. If a smoke alarm is installed within 20 feet of a cooking appliance, the rule also requires either that the smoke alarm include a temporary silencing feature (hush button) to provide consumers with a mechanism to shut off the alarm temporarily, usually for about 15–20 minutes (e.g., if the alarm sounds frequently during periods of cooking), or that the smoke alarm be of a photoelectric-type, which is less sensitive to cooking fumes. Whenever possible, the alarm should be located in the living area remote from the kitchen and cooking appliances.

4. Section 3280.208(b)(1)(ii) clarifies that manufacturers are to install a smoke alarm in each room ''designed for sleeping'', rather than outside each bedroom area, because occupants are most vulnerable when asleep.

5. Section 3280.208(b)(1)(iii) permits, exclusive of the basement, the required stairway smoke alarms in multistory homes to be installed on the ceiling near the top of a stairway or above the stairway, for the field installation and interconnection of the required smoke alarm. A separate requirement is established in § 3280.208(b)(2) for basement alarms.

6. Section 3280.208(b)(2) requires each manufacturer to provide, but not necessarily to install, a smoke alarm for every home designed to be placed over a basement. In addition, the manufacturer must install at the factory an electrical junction box that accommodates the installation and interconnection of the basement smoke alarm. The instructions and information provided by the manufacturer for the installer and homeowner must make it clear that a smoke alarm should be installed on the basement ceiling near the stairway.

7. Section 3280.208(b)(3) omits some of the specific locations in which smoke alarms could not be placed under the proposed rule, in favor of performance-oriented requirements.

8. Section 3280.208(c)(1) permits manufacturers to mount smoke alarms on ceilings. This helps manufacturers to avoid other locations that may be more vulnerable to false alarms and is consistent with locations permitted by model residential fire and building codes.

9. Sections 3280.208(c)(2) and (3) include mounting and location requirements for smoke alarms located on sloping ceilings, and distinguish between peaked sloping and shed sloping ceilings. The revisions from the proposed rule are needed to maximize the effectiveness and proper operation of smoke alarms mounted in these locations and are consistent with requirements of model residential fire and building codes.

10. Sections 3280.208(d)(1)(i) and (ii) require each smoke alarm to be powered by the home's electrical system and be provided with a battery back-up, or, alternatively, to be powered by a battery with a 10-year life.

11. Section 3280.208(d)(2) clarifies that more than one smoke alarm may be placed on the same electrical circuit.

12. Section 3280.208(d)(3) requires that the mandated smoke alarms be interconnected so that the operation of any one of those alarms activates all other required alarms in the home.

13. Section 3280.208(e) now requires manufacturers to provide visible and tactile notification appliances, in addition to the smoke alarms otherwise required, but only if ordered by the purchaser or retailer before the home enters the first stage of production. A proposed prescriptive requirement for the location of a visible notification appliance in a room designed for sleeping has been deleted as unnecessary.

14. In order to avoid damaging smoke alarms, § 3280.208(f)(1) now provides that operational tests are to be performed after dielectric testing is conducted. The rule also clarifies that retesting is required when an alarm does not function, and provides that an alarm must be replaced if it still does not function properly after being retested.

15. Section 3280.208(f)(3) requires that the smoke alarm manufacturer's information describing the operation, maintenance, and testing of the alarm be provided in the same manner and location as the consumer manual required under 24 CFR § 3282.207.

16. A conforming change is made in terminology used in 24 CFR part 3282, substituting ''alarms'' for ''detectors''.

IV. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2502–0253. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number. HUD will publish a separate Notice with the OMB approval number, when issued.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule will not impose any Federal mandates on any State, local, or tribal governments or on the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Environmental Review

A Finding of No Significant Impact (FONSI) with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule and in so doing certifies that the rule will not have a significant economic impact on a substantial number of small entities. The rule revises HUD's existing regulations for the placement and installation of smoke alarms in new manufactured housing. The new requirements ensure that smoke alarms installed in new homes will be more effective in warning of the presence of smoke. This is accomplished primarily by changing the location requirements to ensure that smoke alarms operate more effectively. Because home manufacturers are already required to provide working smoke alarms in manufactured homes, the costs associated with complying with the new requirements would be minimal.

HUD has conducted a material and labor cost impact analysis for this rule including both small and large entities. For the purposes of this analysis, HUD is using the SBA definition of a small entity of 500 or fewer employees. On this basis, HUD is categorizing manufacturers with 3 or fewer production facilities as small entities in preparing this analysis.

The potential cost impact for material and labor, based on a per-home cost, does not vary significantly between the two types of entities. HUD is also aware that certain costs to revise existing floor plans and acquiring DAPIA approval are anticipated. The Department surveyed several manufacturers for design-revision cost estimates without successfully determining a dollar cost. In consultation with a third-party representative, estimated costs were determined.

The potential cost impact of material and installation labor on small entities, based on a per-home cost, estimated to be $32.50 multiplied by 50,000 homes produced in a year (assuming conservatively that no manufacturer currently uses AC smoke alarms with battery back-up), is $1.625 million annually. Material and labor constitutes a cost impact of about $32,500 ($1,625,000/50 manufacturers) per small entity per year.

In addition to the above costs, there is also a cost associated with revising designs to comply with the new requirements for smoke alarms. The design cost consists of an initial cost of revising all existing plans and the costs for preparing new designs which have been averaged over a 5-year period. The per-home cost for small entities is estimated to be $9.00, yielding a total cost of $450,000 ($9.00 × 50,000 homes) annually to small entities. The design impact constitutes a cost of about $9,000 per small entity per year for the 5-year period. Cost estimate calculation for small entities: 100 designs in first year × 4 hours per design × $50 per hour + 25 new designs each year × 5 years × 4 hours per design × $50 per hour = $45,000. $45,000/5-year period = $9,000 per manufacturer per year. The per-home cost is based on 1000 homes per small entity per year (50,000 homes/50 manufacturers).

Therefore, a total cost of approximately $2.08 million ($41.50 × 50,000 homes) annually is projected for

small entities. On average, the entire cost impact represents an estimated cost increase of about $41,500 ($32,500 + $9,000) per small entity per year (based on approximately 50 small entities within the industry). Although 50% of manufactured home producers may be classified as small entities, their home production comprises about 17% of the industry's annual home production. An analysis of this cost impact as a percentage of profits was not completed, as profit information was not available for small entities.

The potential cost impact of material and installation labor on large entities, based on a per-home cost, estimated to be $31.40 multiplied by 250,000 homes produced in a year (assuming conservatively that no manufacturer currently uses AC smoke alarms with battery back-up), is $7.85 million annually. Material and labor constitutes a cost impact of about $157,000 ($7.85 million/50 manufacturers) per large entity per year.

In addition to the above costs, there is also a cost associated with revising designs to comply with the new requirements for smoke alarms. The design cost consists of an initial cost of revising all existing plans and the costs for preparing new designs which have been averaged over a 5-year period. The per-home cost for large entities is estimated to be $6.00, yielding a total cost of $1.5 million ($6.00 × 250,000 homes) annually to large entities. The design impact constitutes a cost of about $30,000 per large entity per year for the five-year period. Cost estimate calculation for large entities: 500 designs in first year × three hours per design × $50 per hour + 100 new designs each year × five years × three hours per design × $50 per hour = $150,000. $150,000/five-year period = $30,000 per large entity per year. The per-home cost is based on 5000 homes per manufacturer (250,000 homes/50 manufacturers).

Therefore, a total cost of approximately $9.35 ($7.85 million + $1.5 million) million annually is projected for large entities. On average, the entire cost impact represents an increase of about $187,000 ($9.35 million/50 manufacturers) per large entity per year (based on approximately 50 large entities within the industry).

As a result, the total annual estimated cost impact is $11.43 million for all small and large manufacturers ($9.35 million + $2.08 million). The following charts provide a comparison of, and estimates for all costs, based on HUD's existing regulation and this final rule, for small and large entities.

Cost factor	Current rule requirements	New rule requirements	Change in cost	Cost impact
Impact on Small Entities				
Smoke Alarm	2 × $5.50=$11.00 (2 AC powered smoke alarms).	4 × $8.75=$35.00 (4 AC+battery back-up smoke alarms).	$35.00–11.00	$24.00
Wiring	50′ × $0.065=$3.25 (14–2 Wire)	70′ × $0.075=$5.25 (14–3 Wire)	$5.25–3.25	2.00
Installation Labor	$6.50	$13.00	$13.00–6.50	6.50
Design-revision	$0	$9.00	$9.00–0	9.00
Total				41.50
Impact on Large Entities				
Smoke Alarm	2 × $5.50=$11.00 (2 AC powered smoke alarms).	4 × $8.50=$34.00 (4 AC+battery back-up smoke alarms).	$34.00–11.00	$23.00
Wiring	50 × $0.06=$3.00 (14–2 Wire)	70 × $0.07=$4.90 (14–3 Wire)	$4.90–3.00	1.90
Installation Labor	$6.50	$13.00	$13.00–6.50	6.50
Design-revision	$0	$6.00	$6.00–0	6.00
Total				37.40

In estimating costs under the current regulation and new regulation, HUD used the following assumptions (1) an average home (28′ ×60′) contains three bedrooms; (2) the home has a smoke alarm in each bedroom and one in the common area (all smoke alarms have battery backup); (3) installation under the current rule involves about 50 feet of 14–2 wiring for two smoke detectors, an additional 20 feet of wiring for the required alarms in each bedroom (total of 70′ of 14–3 wire); (4) the cost of 14–2 wiring=$0.06 per lineal foot for large entities, and the cost for small entities=$0.065 per lineal foot; (5) the cost of 14–3 wiring=$0.07 per lineal foot for large entities and the cost for small entities=$0.075 per lineal foot; (6) the installation labor costs are average lump sum costs obtained from a spectrum of manufactured home builders; (7) the prices reflected in the table were obtained from manufactured home producers representing small and large entities; (8) costs obtained from smoke alarm manufacturers are generally higher than costs paid by home producers as large quantity discounts are not included; (9) an estimated 100 designs for each small entity and approximately 500 designs for each large entity are in need of revision; (10) industry production is estimated at 300,000 homes annually.

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, Regulatory Planning and Review. OMB determined that this rule is a ''significant regulatory action'' as defined in section (3)(f) of the Order, although not an economically significant regulatory action under the Order. As discussed under the heading, ''Impact on Small Entities,'' above, the rule is estimated to have an annual cost impact of only $11.43 million. However, as also discussed above in this preamble, the full implementation of this rule is estimated to result in 30 lives saved annually. Any changes made to this rule as a result of review under the Order are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Executive Order 13132, Federalism

Executive Order 13132 (''Federalism'') prohibits an agency from publishing any rule that has Federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State

law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have Federalism implications and does not impose substantial direct compliance costs on State and local governments nor preempts State law within the meaning of Executive Order 13132.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number is 14.171.

List of Subjects

24 CFR Part 3280

Fire prevention, Housing standards, Incorporation by reference, Manufactured homes.

24 CFR Part 3282

Administrative practice and procedure, Consumer protection, Intergovernmental relations, Investigations, Manufactured homes, Reporting and recordkeeping requirements, Warranties.

Accordingly, for the reasons stated in the preamble, HUD amends 24 CFR parts 3280 and 3282 as follows:

PART 3280—MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS

1. The authority citation for 24 CFR part 3280 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 5403, and 5424.

§ 3280.112 [Amended]

2. Section 3280.112 is amended by removing the word ''detectors'' and adding in its place the word ''alarms''.

3. Section 3280.202 is amended by removing the definition of ''Single-station alarm device'' and the definition of ''Smoke detector'', and by adding the definition of ''Smoke alarm'' and ''Tactile Notification Appliance'' to read as follows:

§ 3280.202 Definitions.

* * * * *

Smoke alarm: An alarm device that is responsive to smoke.

Tactile notification appliance: A notification appliance that alerts by the sense of touch or vibration.

4. Section 3280.208 is revised to read as follows:

§ 3280.208 Smoke alarm requirements.

(a) *Labeling.* Each smoke alarm required under paragraph (b) of this section must conform with the requirements of UL 217, Single and Multiple Station Smoke Alarms, dated January 4, 1999 (incorporated by reference, see § 3280.4), or UL 268, Smoke Detectors for Fire Protective Signaling Systems, dated January 4, 1999 (incorporated by reference, see § 3280.4), and must bear a label to evidence conformance.

(b) *Required smoke alarm locations.* (1) At least one smoke alarm must be installed in each of the following locations:

(i) To protect both the living area and kitchen space. Manufacturers are encouraged to locate the alarm in the living area remote from the kitchen and cooking appliances. A smoke alarm located within 20 feet horizontally of a cooking appliance must incorporate a temporary silencing feature or be of a photoelectric type.

(ii) In each room designed for sleeping.

(iii) On the ceiling of the upper level near the top or above each stairway, other than a basement stairway, in any multistory home completed in accordance with this part or part 3282 of this chapter. The alarm must be located so that smoke rising in the stairway cannot be prevented from reaching the alarm by an intervening door or obstruction.

(2) For each home designed to be placed over a basement, the manufacturer must provide a smoke alarm for the basement and must install at the factory an electrical junction box for the installation of this smoke alarm and for its interconnection to other smoke alarms required by this section. The instructions for installers and information for homeowners required in paragraph (f) of this section must clearly indicate that a smoke alarm should be installed and is to be located on the basement ceiling near the stairway.

(3) A smoke alarm required under this section must not be placed in a location that impairs its effectiveness or in any of the following locations:

(i) Within 3 feet horizontally from any discharge grille when a home is equipped or designed for future installation of a roof-mounted evaporative cooler or other equipment discharging conditioned air through a ceiling grille into the living space; and

(ii) In any location or environment that is prohibited by the terms of its listing, except as permitted by this section.

(c) *Mounting requirements.* (1) Except in rooms with peaked sloping or shed sloping ceilings or as permitted pursuant to paragraph (e) of this section, smoke alarms must be mounted either:

(i) On the ceiling at least 4 inches from each wall; or

(ii) On a wall with the top of the alarm not less than 4 inches below the ceiling, and not farther from the ceiling than 12 inches or the distance from the ceiling specified in the smoke alarm manufacturer's listing and instructions, whichever is less.

(2) Except as permitted pursuant to paragraph (e) of this section, in rooms with peaked sloping ceilings, smoke alarms must be mounted on the ceiling within 3 feet, measured horizontally, from the peak of the ceiling; at least 4 inches, measured horizontally, below the peak of the ceiling; and at least 4 inches from any projecting structural element.

(3) Except as permitted pursuant to paragraph (e) of this section, in rooms with shed sloping ceilings, smoke alarms must be mounted within 3 feet of the high side of the ceiling, and not closer than 4 inches from any adjoining wall surface and from any projecting structural element.

(d) *Connection to power source.* (1) Each smoke alarm must be powered from:

(i) The electrical system of the home as the primary power source and a battery as a secondary power source; or

(ii) A battery rated for a 10-year life, provided the smoke alarm is listed for use with a 10-year battery.

(2) Each smoke alarm whose primary power source is the home electrical system must be mounted on an electrical outlet box and connected by a permanent wiring method to a general electrical circuit. More than one smoke alarm is permitted to be placed on the same electrical circuit. The wiring circuit for the alarm must not include any switches between the over-current protective device and the alarm, and must not be protected by a ground fault circuit interrupter.

(3) Smoke alarms required under this section must be interconnected such that the activation of any one smoke alarm causes the alarm to be triggered in all required smoke alarms in the home.

(e) *Visible and tactile notification appliances.* (1) In addition to the smoke alarms required pursuant to this section, the manufacturer must provide visible and listed tactile notification appliances if these appliances are ordered by the purchaser or retailer before the home enters the first stage of production. These appliances are required to operate from the primary power source, but are not required to operate from a secondary power source.

(2) A visible notification appliance in a room designed for sleeping must have a minimum rating of 177 candela, except that when the visible notification appliance is wall-mounted or

suspended more than 24 inches below the ceiling, a minimum rating of 110 candela is permitted.

(3) A visible notification appliance in an area other than a room designed for sleeping must have a minimum rating of 15 candela.

(f) *Testing and maintenance.* (1) Each required smoke alarm installed at the factory must be operationally tested, after conducting the dielectric test specified in § 3280.810(a), in accordance with the alarm manufacturer's instructions. A smoke alarm that does not function as designed during the test and is not fixed so that it functions properly in the next retest must be replaced. Any replacement smoke alarm must be successfully tested in accordance with this paragraph.

(2) Home manufacturers must provide specific written instructions for installers on how to inspect and test the operation of smoke alarms during installation of the home. These instructions must indicate that any smoke alarm that does not meet the inspection or testing requirements needs to be replaced and retested.

(3) Home manufacturers must provide the homeowner with the alarm manufacturer's information describing the operation, method and frequency of testing, and proper maintenance of the smoke alarm. This information must be provided in same manner and location as the consumer manual required by § 3282.207 of this chapter, but does not have to be incorporated into the consumer manual. No dealer, distributor, construction contractor, or other person shall interfere with the distribution of this information.

PART 3282—MANUFACTURED HOME PROCEDURAL AND ENFORCEMENT REGULATIONS

5. The authority citation for 24 CFR part 3282 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5424.

§ 3282.203 [Amended]

6. Section 3282.203(b)(4) is amended by removing the word ''detectors'' and adding in its place the word ''alarms''.

§ 3282.203(b)(4) [Amended]

Dated: January 2, 2002.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 02–6026 Filed 3–18–02; 8:45 am]

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Federal Register

Tuesday,
March 19, 2002

Part XI

Department of Transportation

Federal Aviation Administration

14 CFR Part 121

Flightcrew Compartment Access and Door Designs; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. FAA–2001–10770; SFAR 92–4]

RIN 2120–AH55

Flightcrew Compartment Access and Door Designs

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action supersedes Special Federal Aviation Regulation (SFAR) 92–3, which was published on January 15, 2002, to allow operators to quickly modify the flightcrew compartment door to delay or deter unauthorized entry to the flightcrew compartment. This action temporarily authorizes variances from existing design standards for the doors and certain operational rules associated with the modifications. It allows for approval for return to service of modified airplanes without prior approved data if the modification constitutes a major alteration. This action also mandates these modifications on airplanes in certain passenger and cargo carrying operations. This action prohibits the possession of flightdeck compartment door keys by other than the flightcrew during flight, unless the flightdeck door has an internal flightdeck locking device installed, operative, and in use. This action is being taken in the wake of the September 11, 2001, terrorist attacks against four U.S. commercial airplanes.

DATES: This action is effective from March 19, 2002, until April 9, 2003.

FOR FURTHER INFORMATION CONTACT: Carol Martineau, Certification Procedures Branch, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9568; e-mail address: *9-awa-avr-design@faa.gov.*

SUPPLEMENTARY INFORMATION:

Availability of This Action

You can get an electronic copy of this document from the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search).*

(2) On the search page, type in the last five digits of the docket number shown at the beginning of this document. Click on ''search.''

(3) On the next page, which contains the docket summary information, click on the item you want to see.

You can also get an electronic copy using the Internet through the FAA's web page at *http://www.faa.gov/avr/arm/nprm/nrpm.htm* or the Government Printing Office's web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a job by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Ave., SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number of SFAR number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information advice about compliance with statutes and regulations within the FAAs jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official. Internet users can find additional information on SBREFA on the FAAs web page at http:www.faa.gov/avr/arm/sbrefa.htm and send electronic inquiries to the following Internet address: *9–AWA–SBREFA@faa.gov.*

Background

The September 11, 2001, hijacking events have demonstrated that some persons are willing to hijack airplanes and use them as weapons against the citizens of the United States. This is a safety and security threat that was not anticipated and, therefore, not considered in the design of transport airplanes. The recent hijackings make it clear that there is a critical need to improve the security of the flightcrew compartment. These improvements should deter terrorist activities and, if they are attempted, delay or deny access to the cockpit.

On November 6, 2001, Congress enacted the Aviation and Transportation Security Act, Public Law 107–71. Section 104(a)(1)(B) of the Act requires the FAA to issue an order requiring the strengthening of the flightdeck door and locks on certain passenger carrying aircraft.

Flightcrew Compartment Door Designs

Flightcrew compartment doors on transport category airplanes have been designed principally to ensure privacy, so pilots could focus their entire attention to their normal and emergency flight duties. The doors have not been designed to provide an impenetrable barrier between the cabin and the flightcrew compartment. Doors have not been required to meet any significant security threat, such as small arms fire or shrapnel, or the exercise of brute force to enter the flightcrew compartment.

Besides affording an uninterrupted work environment for the flightcrew, flightcrew compartment doors often must meet other important safety standards. Should there be a sudden decompression of the airplane, separate compartments within the airplane, like the cabin and the crew compartment, must be designed so that the pressure differential that is created does not compromise the basic airplane structure. Certification standards require that airplane designs provide a method to compensate for decompression in an manner that avoids significant damage to the airplane. In many cases, flightcrew compartment doors provide the pressure compensation by being vented or swinging open to equalize the pressure between the cabin and the flightcrew compartment.

In addition, design standards require that the flightcrew have a path to exit the flightcrew compartment in an emergency, if the cockpit window exits are not usable. Flightcrew compartment doors have been designed to provide this escape path. But this escape feature may also enable easier unauthorized entry into the flightcrew compartment from the cabin.

Operating regulations, in particular § 121.379(b) in the case of a major alteration, require the work to be done in accordance with technical data approved by the Administrator. Operating regulations for airlines also require that each crewmember have a key readily available to open doors between passengers and an emergency exit. Some airlines issue flightcrew compartment door keys to all their crewmembers. This allows flight attendants to enter the flightcrew compartment and assist the flightcrew in an emergency, such as incapacitation of a flight crewmember. But it also offers an opportunity for an individual to overpower or coerce a flight attendant, take away the key, and enter the flightcrew compartment.

Rapid Response Team

To evaluate what could be done to improve flightcrew compartment security, the Secretary of Transportation formed a Rapid Response Team for Aircraft Security. The Team included representatives of airplane designers, airline operators, airline pilots, and

flight attendants. There was a clear consensus from this group, and agreement by the FAA, that immediate actions must be taken to strengthen the flightcrew compartment door. The short-term options, though, in one way or another could conflict with regulatory design requirements such as those discussed above.

The Rapid Response Team addressed the design issues and found the relative safety risks to be small in view of the emergent security risk of unauthorized flightcrew compartment entry. The FAA agrees with this conclusion. The Rapid Response Team report also concluded, and the FAA agrees, that all existing design requirements should continue to be applied in the long term. Therefore, this SFAR allows a temporary period during which non-compliance with design requirements will be allowed when improvements to flightcrew compartment security are made.

In addition to waiving specific airworthiness regulations, the FAA is waiving procedural requirements applicable to major alternations (§ 121.379(b)). Besides the information obtained from the Rapid Response Team, the FAA has received technical information from airline operators and manufacturers regarding what modifications are possible and how quickly they can be incorporated. The technical data reviewed by the FAA reflect good design practices, and the FAA is confident that installations can be made without unduly compromising safety.

Given the urgency of the need to take action to reinforce the flightcrew compartment doors, the FAA finds that it is in the public interest to forego the requirement that major alterations to accomplish this task have data previously approved by the Administrator. This portion of the SFAR is limited to 6 months. Major alterations performed after that data must be in accordance with approved data, and whatever the operator installs in the short term must ultimately be brought into full regulatory compliance.

The Original SFAR 92 Provisions

Original SFAR 92 was published on October 9, 2001, and allowed all part 121 passenger carrying operators to install fligthcrew compartment door improvements and prohibited the possession of flightcrew compartment keys by persons other than flight crewmembers during flight. It was very broad and allowed maximum short-term flexibility in crafting enhanced door security measures. It allowed the doors to be modified and airplanes to be operated with modified doors.

The FAA established an 18-month duration for the portions of the SFAR concerning airworthiness requirements. We expected this would give the industry sufficient time to design and install more permanent changes to door security and establish procedures for flightcrew compartment door access that meet regulatory requirements for egress and venting.

The SFAR required operators to submit a report to the FAA that detailed the specific modifications they made to the flightcrew compartment door. This allowed the FAA to monitor what had been installed and take action if the installation created an unacceptable safety risk. Further, to monitor progress toward the goal of full compliance, the SFAR required a report by April 22, 2002, that describes how the operator will meet regulatory compliance for egress and venting.

We also expected that airframe manufacturers and modifiers would produce service information to assist operators in developing modifications to improve intrusion resistance to the flightcrew compartment. While service documents do not require separate approval under this SFAR, such modifications may also be installed in production airplanes. The modification authority granted by the SFAR also applied to manufacturers and other persons that applied for airworthiness certificates to enable delivery of airplanes to the operators.

In addition, we understood that some operators might rely on suppliers to produce parts to support these modifications to the flightcrew doors. Under normal circumstances, such parts producers are subjected to the requirement to obtain parts manufacturer approvals in accordance with 14 CFR 21.303. However, to facilitate reinforcement of these doors, the SFAR included a provision that overrode the requirement for parts production approval in support of these activities.

Should any of the changes to the door constitute a major alteration, the SFAR temporarily relieved the operator of having to obtain prior approval of the data. As soon as the design data is submitted, the FAA will work with the operators to identify a mutually acceptable process and time to get the data approved. In the meantime, the airworthiness certificates on airplanes that have been modified will remain valid. In making returns to service of airplanes modified under the SFAR, documents can reflect compliance with regulatory requirements by citing the SFAR.

In addition to the above changes to harden the flighcrew compartment doors against intruders, the FAA also believed it was prudent to eliminate the ability of intruders to gain access by obtaining a flight attendant's key. For that reason, the SFAR temporarily changed the requirement in § 121.313(g) by stating that only flight crewmembers, and not cabin crewmembers, would have flightcrew compartment keys during flight. This lessened the opportunity for gaining unauthorized access and reduced the likelihood of attacks on cabin crewmembers to obtain keys on airplanes where the flightdeck door does not have an internal locking device.

First Revision to SFAR 92—SFAR 92–1

SFAR 92 has remained substantially as originally written. However, modifications have been issued to change the scope of the rule and to clarify provisions. SFAR 92 originally authorized only part 121 passenger carrying operators to make the quick modifications to the flightdeck doors. Because of the risk posed by having other than flightcrew members onboard the airplane as allowed in § 121.583, FedEx petitioned the FAA to allow it to install additional door security measures in accordance with the provisions of SFAR 92. The FAA determined that the modifications requested by FedEx would apply to similarly situated cargo airplane operators and that the threat is similar to that of passenger airplanes. SFAR 92–1 was published on October 17, 2001, and expanded the modification authority to all part 121 operators.

Second Revision to SFAR 92—SFAR 92–2

As originally published, SFAR 92 temporarily changed section 121.313(g) to prohibit the possession of flightdeck keys by non-flightdeck crewmembers. Since initial issuance of the SFAR, internal locking devices that render the key useless for flightdeck access have been installed on many air carrier airplanes. Since the keys have multiple uses in the airplane beyond the flightdeck door, prohibiting possession of the flightdeck door keys by non-flight crewmembers on these airplanes is only an inconvenience to the crew and not a deterrent to terrorist activity.

Allowing non-flight crewmembers access to the keys is acceptable when the internal locking device is in use on the airplane. ''In use'' contemplates that the device is locked from the inside by the flightdeck crew. If a flightdeck crewmember must exit the flightdeck for some reason, either the remaining

flightdeck crewmember, or a cabin crewmember that enters the flightdeck, will immediately lock the internal device behind the exiting flightdeck crewmember. This provision may also reduce the opportunity for coercion, since the flight attendant can safely hand over the key.

As a result, when SFAR 92–2 was published on November 21, 2001, it added a phrase to the end of § 121.313(a)(ii) that allowed possession of the key under certain circumstances. The limitations on keys did not apply to cargo operators because flight attendants are only required on passenger airplanes; nor did they apply to part 129 operators because part 121 regulations do not apply to them. This change to 121.313(g) will expire with this SFAR.

SFAR 92–2 also replaced the 90 day and 180 day reporting and termination time frames with specific dates, January 15, 2002, and April 22, 2002, respectively. Since SFAR 92 was republished more than once, insertion of specific dates eliminated confusion in calculating these dates.

Third Revision to SFAR 92—SFAR 92–3

When SFAR 92 was originally issued, and subsequently revised, it was the expectation of the FAA that flightdeck modifications would be made as soon as possible. While this was the case for the substantial majority of operators, not all had accomplished the short-term modifications. Because of the FAA's original expectation, SFAR 92 did not contain a provision mandating the internal door modifications. Therefore, the FAA determined that a mandate was necessary to assure that all part 121 passenger-carrying airplanes required to have flightdeck doors were modified. The FAA also considered the issue of airplanes that carried only cargo, but are permitted to also carry certain persons as defined in § 121.583 as discussed in SFAR 92–1. Provisions of the regulations did not ensure that a person who is intent on using an airplane as a weapon is unable to board an all-cargo airplane in accordance with § 121.583. Therefore, in cases where these airplanes already have flightdeck doors, the FAA determined that the door should also be modified to improve security.

Pub. L. 107–71 directed the Administrator of the FAA to issue an order that required the strengthening of flightdeck doors and locks. SFAR 92–3 was issued and required the installation of internal locking devices on flightdeck doors within 45 days of publication of the SFAR. The airplanes covered by this provision are passenger-carrying airplanes operated under part 121 that are required to have flightdeck doors and all-cargo airplanes that have flightdeck doors installed. Given the large number of modifications already made on a large variety of airplanes within the fleet, the FAA believed that 45 days should provide operators who have not made the relevant modifications with sufficient time to do so.

This revision to the SFAR expanded the modification authority to U.S. registered, transport category airplanes that are operated under part 129, foreign operations. Because these airplanes are U.S. registered, the FAA must issue any authorization to modify the airplanes. The FAA has received several inquires from such operators that requested authorization to make modifications as authorized in SFAR 92. SFAR 92–3 has provided such authorization.

The FAA recognized that mandating the reinforcing modifications for part 121 operators and authorizing part 129 operators to make modifications may not enable some to make the January 15, 2002, reporting requirements in SFAR 92–2. As a result, this revision extended the reporting date to February 15, 2002. Finally, this revision also made it clear that all operators that must strengthen their flightdeck doors in accordance with the new provisions of § 121.313 (discussed below) must submit a plan for accomplishing those modifications by April 22, 2002. This requirement applies regardless of when an operator installs an interim modification, as required by the SFAR.

This Revision to SFAR 92—SFAR 92–4

To date, the SFAR 92 authority to return airplanes to service without previously approved data in the case of major alterations will terminate on April 22, 2002. Since installation of the internal locking devices was originally voluntary, the purpose of this time limit was to encourage rapid installation of the devices. SFAR 92–3 required the installation of locking devices on or before March 1, 2002 (45 days after the January 15, 2002, publication of SFAR 92–3). Since installation of an internal locking device is now required, the April 22, 2002, date is no longer needed as an incentive.

Further, termination of that portion of the modification authority on that date will inhibit conversion and use of airplanes brought into an operator's fleet after April 22, 2002, such as airplanes that are either newly delivered or re-activated from retirement. As a result, this SFAR removes the April 22, 2002, limitation on approval for return to service without approved data. Such approvals will be limited only by the time limit applied to other provisions of the SFAR, the expiration date of April 9, 2003.

The SFAR 92–3 requirement for modification of flightdeck doors on certain airplanes has triggered a potential conflict with requirements to have the door open during take-off and landing for emergency evacuation purposes. In weighing the competing safety risk between emergency egress and terrorist threat, the FAA has determined that for the duration of the SFAR, the terrorist threat is a greater risk. As a result, this revision to the SFAR explicitly states that operational requirements in sections 121.313(h) and 121.583(b)(1) and (2) are waived if a conflict exists when internal locks are installed and used. The introductory language of paragraph 2 is revised to reflect this change.

The introductory language of paragraph 2 is further revised to include reference to § 121.153(c), in order to address airplanes that are registered in another country, but are operated by a part 121 certificate holder. These airplanes would otherwise be required to meet all airworthiness requirements.

Paragraph 2(a)(ii) of the current SFAR has an April 22, 2002, reporting requirement. The report must include a schedule for reaching full compliance with all applicable airworthiness requirements. As structured, this provision only applies to airplanes modified using technical data not previously approved by the Administrator. SFAR 92–3 required all affected airplanes to install internal locking devices. Further, the companion rule described below requires installation of reinforced doors on or before April 9, 2003. As a result, this version of the SFAR changes the reporting requirement in paragraph 2(a)(ii).

Paragraph 2(a)(ii) is deleted. Instead, a new paragraph 3 is added to require operators of all affected airplanes to report what modifications will be made and to provide a modification schedule for full compliance with the April 9, 2003, retrofit requirement.

Finally, paragraph 6 is revised to require that cargo airplanes, on which flightdeck doors are installed after January 15, 2002, are also subject to the strengthening requirement. This was the intent of SFAR 92–3, but that final rule only explicitly applied to cargo airplanes on which flightdeck doors were installed on January 15, 2002.

Other Rulemaking

In parallel with SFAR 92–3, the FAA issued an immediately adopted rule

(IAR) which adopts new design standards for flightdeck doors in part 25 of the Code of Federal Regulations. Generally speaking, these new standards will enhance resistance to blunt force and ballistic intrusion. Also, the IAR requires all airplanes required to have a door under section 121.313(f), as well as all-cargo airplanes that have flightdeck doors installed, to have a door meeting the new design standard. The stronger doors must be installed not later than April 9, 2003, the expiration date of this SFAR. In essence, the doors meeting the new design standards will replace the doors reinforced under this SFAR.

Justification for Immediate Adoption

Because the circumstances described herein warrant immediate action by the FAA, the Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. Further, the Administrator finds that good cause exists under 5 U.S.C. 553(d) for making this final rule effective immediately upon publication. This action is necessary to prevent a possible imminent hazard to airplanes and to protect persons and property within the United States.

Additionally, with respect to the provisions requiring modifications to strengthen the flightdeck doors and locks, Public Law 107–71 authorized the Administrator to issue an order without regard to the provisions of chapter 5 of Title 5 of the United States Code. The modification to section 121.313 contained in this SFAR is within the scope of this authority and is adopted without public notice and a prior opportunity to commend.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to this SFAR.

Paperwork Reduction Act

This emergency final SFAR contains information collection activities subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). In accordance with section 3507(j)(1)(B) of that statute, the FAA requested the Office of Management and Budget to grant an immediate emergency clearance on the paperwork package. OMB granted an emergency clearance and assigned OMB control number 2120–0674. As protection provided by the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Following is a description of the information collection burden associated.

Title: Flightcrew Compartment Access and Door Designs.

Summary/Need: The SFAR requires operators to submit a report to the FAA by February 15, 2002, that details the specific modifications. This will allow the FAA to monitor what has been installed and take action if the installation creates an unwarranted safety risk. Further, to monitor progress toward the goal of full compliance, the SFAR requires a report by April 22, 2002, that describes how the operator will come into full regulatory compliance.

Respondents: The respondents are an estimated 135 airplane operators covered under 14 CFR part 121 and 129.

Burden: The burden associated with this SFAR is 6480 hours.

Regulatory Evaluation

This rulemaking action is taken under an emergency situation within the meaning of Section 6(a)(3)(D) of Executive Order 12866, Regulatory Planning and Review. It also is considered an emergency regulation under Paragraph 11(g) of the Department of Transportation (DOT) Regulatory Policies and Procedures. In addition, it is a significant rule within the meaning of the Executive Order and DOT's policies and procedures. No regulatory analysis or evaluation accompanies the final rule. At this time, the FAA is not able to assess whether this final rule will have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act of 1980, as amended. However, we will be conducting a regulatory evaluation of the cost and benefits of this rulemaking, including any impact on small entities, at a later date.

Executive Order 13132, Federalism

The FAA has analyzed this SFAR under the principles and criteria of Executive Order 13132, Federalism. We have determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we have determined that this final rule does not have federalism implications.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' This SFAR does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j) this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of this SFAR has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that this SFAR is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Reporting and recordkeeping requirements, Safety, Transportation.

The Amendment

For the reasons set forth above, the Federal Aviation Administration amends 14 CFR part 121 as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTICS, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

SFAR No. 92–3 [Removed]

2. Remove Special Federal Aviation Regulation No. 92–3.

3. Add Special Federal Aviation Regulation (SFAR) 92–4 to read as follows:

Special Federal Aviation Regulations No. 92–4 Flightcrew Compartment Access and Door Designs

1. *Applicability.* This Special Federal Aviation Regulation (SFAR) applies to all operators that hold an air carrier certificate or operating certificate issued under 14 CFR part 119 and that conduct operations under this part 121 and to operators of U.S. registered transport category aircraft operated under 14 CFR part 129, except paragraph 5 of this SFAR does not apply to cargo operations and 14 CFR part 129 operations. It applies to the operators specified in this SFAR that modify airplanes to improve the flightcrew compartment door installations to restrict the unwanted entry of persons into the flightcrew compartment. This SFAR also applies to production certificate holders applicants for airworthiness certificates for airplanes to be operated by operators specified in this SFAR, and producers of parts to be used in such modification.

2. *Regulatory Relief.* Contrary provisions of this part 21, and §§ 121.313(h), 121.153(a)(2), 121.153(c), 121.379(b), 121.583(b)(1) and (2) and 14 CFR 129.13 notwithstanding:

(a) An operator may operate airplanes modified to improve the flightcrew compartment door installations to restrict the unauthorized entry of persons into the flightcrew compartment without regard to the applicable airworthiness requirements and may modify those airplanes for that purpose, using technical data for previously approved by the Administrator, subject to the following conditions:

(i) Not later than February 15, 2002, submit to the Director, Aircraft Certification Service, a detailed description of the changes to the airplanes that have been accomplished before that date to enhance the intrusion resistance of the flightcrew compartment including identification of what major alterations have been done without previously approved data.

(ii) If, upon reviewing the data submitted in paragraph 2(a)(i) of this SFAR, the Administrator determines that a door modification presents an unacceptable safety risk, the FAA may issue an order requiring changes to such modifications.

(b) An applicant for an airworthiness certificate may obtain such a certificate for modified airplanes to be operated by operators described in this SFAR.

(c) A holder of a production certificate may submit for airworthiness certification or approval, modified airplanes to be operated by operators described in this SFAR.

(d) A person may produce parts for installation on airplanes in connection with modifications described in this SFAR, without FAA parts manufacturer approval (PMA).

3. *Report of Modifications.* Not later than April 22, 2002, all operators who are required to install flightdeck door modifications in accordance with § 121.313(j) must submit a report to the Director, Aircraft Certification Service. The report must describe the modifications to be made and provide a schedule for the changes necessary to restore compliance with all applicable airworthiness requirements and to meet the requirements of § 121.313(j). The schedule may not extend beyond the termination data of this SFAR.

4. *Return to Service Documentation.* Where operators have modified airplanes as authorized in this SFAR, the affected airplane must be returned to service with a note that it was done under the provisions of this SFAR.

5. *Provision for Flightdeck Door Compartment Key.* Contrary to provisions of § 121.313(g), the following provision applies: A key for each door that separates a passenger compartment from an emergency exist must be identified to passengers in the briefing required by § 121.571(a)(1)(ii). The key required for access to the emergency exit must be readily available for each crewmember. No key to the flightcrew compartment shall be available to any crewmember during flight, except for flight crewmembers, unless an internal flightdeck locking device such as a deadbolt or bar is installed, operative, and in use.

6. *Door Modification Requirement.* After March 1, 2002, for each airplane required under § 121.313(f) to have a door between the passenger and pilot compartments, and for transport category all-cargo airplanes that have a door installed between the pilot compartment and any other occupied compartment on or after January 15, 2002, such door must be equipped with an internal locking device installed, operative, and in use. Such internal locking device has to be designed so that it can only be unlocked from inside the flightdeck.

7. *Termination.* This SFAR terminates on April 9, 2003.

Issued in Washington, DC, on March 12, 2002.

Jane F. Garvey,

Administrator.

[FR Doc. 02–6366 Filed 3–18–02; 8:45 am]

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Federal Register

Tuesday,
March 19, 2002

Part XII

Department of Transportation

Federal Aviation Administration

14 CFR Parts 1, 21, et al.
Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 21, 43, 45, 61, 65, and 91

[Docket No. FAA–2001–11133; Notice No. 02–07]

RIN 2120–AH19

Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of on-line public forum.

SUMMARY: On February 5, 2002, the FAA published a Notice of Proposed Rulemaking (NPRM), which proposes requirements for the certification, operation, and maintenance of light-sport aircraft (67 FR 5368, notice No. 02–03). The comment period closes on May 6, 2002. To supplement the traditional comment period, we are announcing an on-line public forum, allowing you to answer specific questions we will ask on the Internet. We are offering the forum to assist us in providing a clear and comprehensive final rule. You can continue to submit comments to the docket during the public forum, as outlined below and in the NPRM.

DATES: You may access the on-line public forum beginning April 1, 2002, at 9 a.m. DST until April 19, 2001, at 4:30 p.m. DST.

ADDRESSES: You may access the on-line public forum at *www.rulemakingpublicforum.com*.

If you are unable to participate in the on-line public forum and wish to submit written comments, address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh St., SW., Washington, DC 20590–0001. You must identify the docket number FAA–2001–11133 at the beginning of your comments, and you should submit two copies of your comments.

You may also submit comments through the Internet to *http://dms/dot.gov*. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level at the Department of Transportation building at the address above. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Susan Gardner at 202/267–5008 for questions regarding airman certification and operational issues (14 CFR parts 1, 43, 45, 61, 65, and 91). For questions regarding aircraft certification (14 CFR part 21), call Steve Flanagan at 202/267–5008. Due to the large volume of questions we expect from this proposal, please leave a message and we will answer your questions within 3 days. Please use this phone number for questions only.

SUPPLEMENTARY INFORMATION:

On-Line Public Forum

We are soliciting on-line discussion and written comments on the questions below. You will be able to read the questions on-line and submit your answers and comments electronically. We will monitor your responses throughout the 3-week forum and may ask you clarifying questions. While we have selected topics that we are particularly interested in (especially related to assumptions we made to develop the proposal), we still welcome all of your comments and suggestions. We will not make any commitments or draw any conclusions while the docket is open for public comment.

On-Line Questions

The questions that will appear on the Internet for the on-line public forum are as follows:

(1) In general, do you agree or disagree with the FAA's proposal?

(2) Please comment on the FAA's assessment of potential safety benefits that the proposed rule would generate, considering the number of light aircraft accidents contained in the NTSB's historical record for primarily U.S.-registered aircraft. This can be found in Section IX—Analysis of Benefits. Do you believe that most accidents over the past 10 years involving non-U.S.-registered light-sport aircraft were reported to the NTSB?

(3) The FAA is proposing to require sport pilot certificate applicants to hold an airman medical certificate or to possess a valid and current driver's license. You can find the reasons for this proposal in Section VI—Section By Section Analysis of the Proposal under the heading ''Part 61 SFAR No. 89,'' proposed section 15. Do you agree with this proposed requirement? Why? Why not?

(4) The FAA is proposing a make and model endorsement for a pilot exercising sport pilot privileges. The FAA believes that this requirement to acquire particular aircraft familiarization is appropriate for aircraft that are generally simple to operate, but that are not known to be designed to any widely accepted design standard. Do you believe this is appropriate? Why? Why not?

(5) The FAA is proposing that the three exemptions issued for training under 14 CFR part 103 be rescinded 3 years after the effective date of the final rule. The FAA believes that this training (for compensation or hire) should be conducted with aircraft meeting the requirements of a special, light-sport category aircraft airworthiness certificate. Also, the FAA believes 3 years is sufficient for instructors conducting that training to obtain a flight instructor certificate with a sport pilot rating. Do you believe that rescinding the exemptions after 3 years is appropriate? If not, why not?

(6) The FAA is proposing to require 80 hours of training for a repairman certificate for maintaining and inspecting special light-sport aircraft used for rental and training. Do you think 80 hours of training is appropriate for this purpose?

(7) In the proposed definition of ''light-sport aircraft,'' the FAA limited the speed to 115 knots in straight and level flight at maximum continuous engine power (V_H). The FAA proposed this because V_H is a measure of the speed and power (or kinetic energy) of the aircraft, and it is relatively easy to measure. Do you believe the FAA should consider a different method of limiting the kinetic energy of a light-sport aircraft? Why or Why not? What alternative would you propose?

(8) The FAA excluded gyroplanes from being eligible for a ''special, light-sport category aircraft airworthiness certificate'' because of the complexity inherent in the design of rotary-winged aircraft. In addition, experimental gyroplanes lack standardized, recognized design, performance and handling criteria. Do you believe the FAA should reconsider including gyroplanes for that certificate? If so, please include any data to support your reasons.

(9) The FAA proposes that the ready-to-fly and kits for light-sport aircraft comply with an industry-developed consensus airworthiness standard in lieu of incorporating these standards into the regulations. This permits the light-sport aircraft industry to demonstrate that it has reached a significant technical level of maturity by developing and publishing its own aircraft design and production standards. By participating in the industry sponsored consensus standards group, the FAA supports developing and updating an effective set of

standards with minimum impact on FAA resources. Do you believe the FAA should incorporate the standards into 14 CFR? Why or Why not? What alternative would you propose?

(10) The FAA is proposing that the manufacturer of ready-to-fly or kit light-sport aircraft comply with the consensus standard and attest to that fact on a manufacturer's statement of compliance. The proposal does not limit a manufacturer's ability to have an independent third-party organization audit this compliance. Do you believe the FAA should be making the findings of compliance? Why or Why not? What alternative would you propose?

(11) In the proposal, the FAA has stated that, for ready-to-fly or kit light-sport aircraft where there is a safety-of-flight issue that is not being remedied by the manufacturer (or their successor), certificate action could be taken against the individual aircraft owner (*i.e.* the aircraft could lose it's airworthiness certificate). The FAA would have to do this because of its responsibility to the public to maintain safety in air commerce. Do you agree with this approach of holding the individual aircraft owner responsible for the airworthiness of the aircraft? Why or Why not? What alternative would you propose?

(12) While the FAA made an assessment of the potential cost of compliance of the proposed rule, the FAA requests comments on the validity of its assumptions. These can be found in two sections of the proposed rule: Section VII—Paperwork Reduction Act; and Section IX—Regulatory Evaluation Summary. Do you believe the FAA made accurate estimates of the number of existing and new sport pilots impacted, the number of sport pilots who would become a Repairman with a maintenance rating for commercial purposes, the number of delivered new light-sport aircraft (by category, such as fixed-wing, powered parachutes, trikes, etc.), and the number of flight instructors with a sport pilot rating, over the next 10 years? Please provide data in support of your comments.

(13) Is the FAA's assumption of the average price of light-sport aircraft potentially impacted by the proposed rule accurate?

(14) In response to the June 1, 1998, Presidential memorandum regarding the use of plain language, the FAA re-examined the writing style currently used in the development of regulations. The memorandum requires Federal agencies to communicate clearly with the public. The FAA drafted this proposal using plain language writing techniques. Is the style of this document clear and did you find it easy to understand?

(15) Do you have any other issues that you think should be addressed related to Light-Sport Aircraft policy?

Issued in Washington, DC, on March 14, 2002.

Anthony F. Fazio,

Director, Office of Rulemaking.

[FR Doc. 02–6643 Filed 3–15–02; 10:40 am]

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CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

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S.J. Res. 32/P.L. 107–152

Congratulating the United States Military Academy at West Point on its bicentennial anniversary, and commending its outstanding contributions to the Nation. (Mar. 14, 2002; 116 Stat. 77)

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